(3)

No. 08-551

In the

SUPREME COURT OF THE UNITED STATES

October Term 2008

GERALD J. BRANKER, Warden,

Petitioner,

v.

WILLIAM ROBERT GRAY, JR.,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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BRIEF IN OPPOSITION

M. Gordon Widenhouse, Jr.*
Rudolf Widenhouse & Fialko
312 West Franklin Street
Chapel Hill, NC 27516
(919) 967-4900

Paul M. Green
Attorney at Law
1304 Carolina Avenue
Durham, NC 27705
(919) 286-2212

*Counsel of Record

QUESTIONS PRESENTED

(1) Did the Fourth Circuit properly apply *Strickland* v. *Washington*, as explicated in *Williams* v. *Taylor*, *Wiggins* v. *Smith*, and *Rompilla* v. *Beard*, in determining counsel rendered ineffective assistance in failing to develop and present readily available evidence of Robert Gray's impaired mental condition at the time of the crime?

(2) Did the Fourth Circuit's adherence to the directives of this Court when it rejected the unreasonable conclusions of the state court regarding proffered expert testimony and defense counsel's post hoc rationalizations to which no deference was required create an issue worthy of certiorari review?

(3) Did the Fourth Circuit correctly determine defense counsel should investigate readily apparent mental health mitigation where their client was indigent and expert psychiatric assistance was available at no cost?

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v.

WILLIAM ROBERT GRAY, JR.,

Respondent.

BRIEF IN OPPOSITION

Petitioner, William Robert Gray, Jr., was granted a writ of habeas corpus entitling him to a new capital sentencing hearing based on defense counsel's failure to obtain and present readily available evidence of his impaired mental condition at the time of the crime. In directing the district court to issue a writ of habeas corpus on this basis, the Fourth Circuit faithfully followed the directives of this Court in applying *Strickland* v. *Washington*, 466 U.S. 668 (1984). *See, e.g., Williams* v. *Taylor*, 529 U.S. 362 (2000); *Wiggins* v. *Smith*, 539 U.S. 510 (2003); *Rompilla* v. *Beard*, 545 U.S. 374 (2005). Contrary to petitioner's overstated suggestions, the Fourth Circuit did not create "an ABA Guidelines no-stone-unturned standard" for counsel in capital cases. [Petition

for a Writ of Certiorari at 13, 15][hereafter Petition] Rather, the Fourth Circuit applied the teaching of *Strickland* and its progeny and imposed on defense counsel only "a duty to make reasonable investigations" but not "to 'investigate every conceivable line of mitigating evidence . . . .'" *Gray v. Branker*, 529 F.3d at (quoting *Strickland*, 466 U.S. at 689, 691). [Pet. App. 15a][1] Because this case presents no misapplication of this Court's precedents and involves no division among the circuits, Mr. Gray respectfully requests that the petition for a writ of certiorari be denied.

STATEMENT OF THE CASE

A jury convicted Mr. Gray of first degree murder in the death of his wife and sentenced him to die. The judgment was affirmed. *State v. Gray*, 347 N.C. 143, 491 S.E.2d 538 (1997), *cert. denied*, 523 U.S. 1031 (1998). He sought relief in state post-conviction litigation on several issues, including ineffective assistance of counsel for not investigating and presenting readily available expert testimony about his impaired mental, emotional, and psychiatric condition at the time of the crime. The state court denied relief after an evidentiary hearing. [Pet. App. 125a-182a] Mr. Gray then sought a writ of habeas corpus. This petition was denied despite the presentation of affidavits showing the ease with which this expert testimony about his impaired mental, emotional,

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[1]References to materials in the appendix to the petition for a writ of certiorari are designated [Pet. App. __]. References to the appendix to this brief are designated [App. __].

and psychiatric condition could have been obtained at no cost to Mr. Gray. [App. Pet. 90a-96a] The United States Court of Appeals for the Fourth Circuit reversed, determining that the district court erred in determining defense counsel did not render ineffective assistance. [Pet. App. 14a-23a, 27a-36a] The Fourth Circuit denied rehearing. [Pet. App. 183a]

FACTUAL BACKGROUND: WILLIAM ROBERT GRAY'S MENTAL, EMOTIONAL, AND PSYCHOLOGICAL CONDITION[2]

Petitioner describes Mr. Gray and his wife as "estranged" because she "left [him] and commenced divorce proceedings." [Petition at 5] According to petitioner, Mr. Gray "intimidated, harassed, stalked, and abused his estranged wife" before killing her. [Petition at 5] But petitioner ignores the facts demonstrating that, during this stressful time, Mr. Gray deteriorated mentally, emotionally, and psychologically. Mr. Gray "became increasingly distraught, emotional, and disturbed, according to his friends and associates." [Pet. App. 3a] He "didn't have a grasp of what was going on" [App. 822] and "didn't appear to be in his right mind." [App.] He made "very agitated" telephone calls and personal visits to Dr. Marshall J. Barker, his wife's gynecologist, who also had training in psychology. [App. 4-6] Dr. Barker expressed his "medical opinion" that Mr. Gray suffered from a "behavioral

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[2]Petitioner's factual summary of the indicia of Mr. Gray's impairing mental, emotional, and psychological condition immediately before, during, and shortly after the crime omits many significant details. [Pet. 4-7, 8-10]

aberration and psychological problem" that included obsessive compulsion. [App. 4] When the Grays sought marital counseling with a psychologist, Marilyn Huber, his confrontational conduct so alarmed Ms. Huber that she withdrew. [App. 7-8] In fact, his wife's lawyer in the domestic case sought a court order to have Mr. Gray undergo a mental assessment, relying on affidavits from Dr. Barker and Ms. Huber. [App. 1-8] This information regarding Mr. Gray's debilitating mental, emotional, and psychological condition shortly before the crime was easily accessible by his lawyer who was also representing Mr. Gray in the domestic litigation.

Mr. Gray's unstable and impaired mental and emotional condition was further evidenced in the local jail immediately after the crime. He was placed on suicide watch and checked by the jail matron every fifteen minutes. [Pet. App. 6a] Within several days of the crime, and at the urging of the chief jailer, Mr. Gray's lawyer, who had never handled a capital case and had been involved in only one first degree murder case, asked the court to commit Mr. Gray for an evaluation of his capacity to proceed. [App. 26-27] At the request of his counsel, Mr. Gray was taken to the state psychiatric hospital where he was housed and evaluated over the next five weeks. Dr. Christopher Floyd, a friend from dental school, spoke with Mr. Gray by telephone almost every day and came to the opinion that Mr. Gray "was damaged emotionally at that point in time. He was not in my viewpoint a hundred percent rational."

[App. 9-13]

Dr. Patricio Lara, a forensic psychiatrist, examined Mr. Gray at the hospital and reviewed the report from the local jail, the results of psychological testing, and telephone interviews with several people, including Mr. Gray's attorney. Although Dr. Lara concluded Mr. Gray was not legally incompetent or insane, he had substantial concerns about his mental state.[3] Mr. Gray "had gone through a serious marital crisis during the month preceding the alleged incident," and "was under ongoing stress related to his family and marital situation." [App. 28-37]

Dr. Lara diagnosed Mr. Gray with "Adjustment disorder with mixed disturbance of emotions and conduct [DSM category] 309.40." He concluded Mr. Gray's conduct during the crime "may have" been influenced by a mental disorder. "The magnitude of ongoing stressors may have contributed to regression in behavior and reductions in impulse control and control of emotions." [App. 28-37] However, Dr. Lara was not satisfied he had obtained an adequate history of Mr. Gray's condition. Dr. Lara observed a pathological lack of trust and suspicion in his thinking, noting Mr. Gray had "focused all present difficulties in his life to have been related to the actions of his wife," suspected her of trying to kill him by tampering with his brakes, and thought he was being photographed in public by strangers. [App. 28-37] There were

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[3]Dr. Lara's report is included in the appendix to this brief. [App. 28-27]

"narcissistic traits with some features of paranoid nature" as well as an "adjustment disorder." [App. 34] Dr. Lara even warned that he may have understated the severity of Mr. Gray's mental disorder at the time of the offense and offered to "to expand" his opinions upon receipt of further information.

> These personality traits are presently observed under a situation of extreme stress and available findings cannot lead to a definite conclusion regarding the intensity of this patient's personality features nor to support full criteria for a diagnosis of a personality disorder. We are aware that we are observing this patient under an extreme situation that may exaggerate personality traits to a level that may appear pathological . . . .
>
> . . . Our current sources of information describing this patient's condition prior to the incident in question are quite limited. If other sources of information become available to describe this patient's functioning and condition prior to that time, I would be glad to review the information to expand my opinions if possible in regards to this patient's condition at the time of the alleged offense.

[App. 34-36] Critically, defense counsel never followed up with Dr. Lara, either by speaking with him directly or providing him with the suggested "other sources of information."

Finally, Dr. Lara reported that, whatever Mr. Gray's mental condition had been at the time of the offense, it remained sufficiently disturbed upon his discharge from Dix that he needed psychiatric treatment to deal with the ongoing court process.

> [T]his patient is undergoing significant amount of distress and could benefit significantly from psychiatric counseling. Potential increase in levels of stress related to ongoing court process may induce further regression in behavior and represent potential for further development of depressive symptoms that may

> require active treatment with medications. I recommend referral to a psychiatrist for this reason.

[App. 35-36]

Mr. Gray was later returned to the local jail. Copies of Dr. Lara's report were sent to defense counsel, Mr. Gray, and the court. [App. 36] Defense counsel had one conversation with Mr. Gray in which he recommended getting an independent psychiatrist to be on standby, mainly because of what Dr. Lara had written about Mr. Gray's loss of impulse control. However, Mr. Gray would not authorize the expense because, according to him, there was nothing wrong with him, he had just been to the psychiatric hospital, and he did not need another evaluation.

At the time of this conversation, their one and only discussion on the subject, Mr. Gray was in need of psychiatric treatment, had not yet been indicted, and was not yet facing a death sentence. Nevertheless, defense counsel never revisited this issue with Mr. Gray.

Mr. Gray became indigent before his trial. All of his assets were frozen or placed in trust for the children by 14 May 14 1993. Petitioner never disputes these facts. His trial did not begin until 1 November 1993. He was given appointed counsel for his eventual appeal because he was indigent.

At the state post-conviction hearing, James E. Bellard, a psychiatrist, testified he examined Mr. Gray in January 1999, and reviewed Dr. Lara's report, Dr. Barker's affidavit, Marilyn Huber's

affidavit, and parts of the transcript.[4] [App. 4-8, 44-45] Dr. Bellard and found indications of mental disorder similar to those Dr. Lara had described in 1992. [App. 4-8, 45-46] He concluded Mr. Gray had a paranoid personality disorder with a severity of about 8 on a scale of 1 to 10 at the time of the crime, likely exacerbated by an Adjustment Disorder due to marital distress. Gray had not lost all capacity to confirm his conduct to the requirements of the law, but he was in considerable emotional distress and his capacity was significantly impaired by his mental disorder. [App. 45-48, 54] A paranoid personality disorder is very serious. "Particularly in response to stress, individuals with this disorder may experience very brief psychotic episodes (lasting minutes to hours)." *Id.*

REASONS FOR DENYING THE WRIT

I. THE FOURTH CIRCUIT PROPERLY APPLIED *STRICKLAND* v. WASHINGTON, AS EXPLICATED BY THIS COURT IN *WILLIAMS* v. TAYLOR, *WIGGINS* v. SMITH, AND *ROMPILLA* v. *BEARD*, IN DETERMINING COUNSEL RENDERED INEFFECTIVE ASSISTANCE IN FAILING TO DEVELOP AND PRESENT READILY AVAILABLE PSYCHIATRIC EVIDENCE OF ROBERT GRAY'S IMPAIRED MENTAL CONDITION AT THE TIME OF THE CRIME.

Robert Gray's capital sentencing jury heard no expert opinion that his ability to understand the criminality of his conduct and to confirm his conduct to the law was significantly impaired. Mr. Gray's lawyers never counseled Mr. Gray about mental heath mitigation, never conducted the most minimal investigation of

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[4] Dr. Bellard's testimony is included in the appendix to this brief. [App. 41-61]

mental health mitigation, and never presented this compelling testimony because they never learned of it because they failed to follow up on the evaluation and recommendation by the state psychiatrist, who examined Mr. Gray at their request, and stated, Mr. Gray "could benefit significantly from psychiatric counseling" and expressed his willingness to review "other sources of information [and] expand my opinions if possible in regards to [Mr. Gray's] condition at the time of the alleged offense." [App. 28-36] The expert opinion was at their fingertips. [App. 62-63] They simply did not reach for it.

In finding this inexplicable failure to perform the most rudimentary investigation of readily-available mental health mitigation constituted ineffective assistance of counsel, the Fourth Circuit faithfully followed the directives of this Court in applying *Strickland*, including *Williams*, *Wiggins*, and *Rompilla*. It required of defense counsel only the duty to make reasonable investigations under the circumstances. Under these facts, the case presents no issue worthy of review.

A. The Fourth Circuit Adhered to *Strickland* and its Progeny.

Defense counsel knew or should have know through reasonable investigation that (1) Mr. Gray had been described by colleagues, friends, and neighbors before the murder as very upset," "very disturbed," "not in his right mind," "very stressed out," "under a great deal of pressure," and "distraught" over the break-up of his

marriage; (2) Mr. Gray had been described by medical, psychological, and social professionals before the murder as "very agitated," obsessively compulsive," "psychological problem," behavioral aberration," "confrontational," "inappropriate," and "very controlling;" (3) Mr. Gray's spouse of twenty years had sought a court-ordered mental examination to determine his "fitness," "mental condition," and possible need "for counseling to deal with the dissolution of the marriage," (4) Mr. Gray's first attorney in the domestic case had withdrawn due to "irreconcilable differences" following personality conflicts, communication problems and lack of cooperation; (5) Mr. Gray had been described immediately after the fatal event as "VERY depressed," "in a state of shock," "dazed," "damaged emotionally" and "not a hundred percent rational," while having anxiety attacks and fainting spells in jail; and (6) Mr. Gary had been evaluated by a psychiatrist at the state mental hospital who (a) concluded he was undergoing "a serious martial crisis" of such magnitude as to result in a "disordar," a "disturbance of emotions," and "regression in behavior and reductions in impulse control and control of emotions," (b) recommended referral to a psychiatrist for treatment, and (c) offered to consider additional diagnoses upon being provided with additional information. [App. 1-8, 9-10, 11-1228-36, 37, 41-61] Yet defense counsel, neither of whom had ever tried a capital case, failed to understand and act upon this

pivotal information.

Failing to develop and present expert witnesses who could expound upon Mr. Gray's serious mental health issues at the time of the crime constitutes ineffective assistance. *Williams*, 529 U.S. at 395-96 (ineffective assistance where "counsel did not fulfill their obligation to conduct a thorough investigation of the defendant's background," noting *Strickland* requires counsel to discover and present mitigating evidence); *see also Wiggins*, 539 U.S. at 533-34 (ineffective assistance where counsel unreasonably limits mitigation investigation "in light of the evidence counsel uncovered in the social services records, relying on *Strickland*); *accord Rompilla*, 545 U.S. at 384-87 (ineffective assistance, in part, for failing to adequately develop and present mental health expert testimony). The Fourth Circuit's ruling was completely consistent with and faithful to *Strickland*.[5] Given its concession that the Fourth Circuit's "conclusion that Gray's trial counsel at sentencing were ineffective is admittedly largely fact-based," petitioner's exaggerated plea that the lower court's are "warping" *Strickland* and using *Williams*, *Wiggins*, and *Rompilla* "as the vehicle to justify the second-guessing of the actions of trial

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[5]The failing by Mr. Gray's lawyers was exponentially more egregious than counsel "not look[ing] in an old case file and stumbl[ing] upon something they had not set out to find." *Rompilla*, 545 U.S. at 396 (Kennedy, J., dissenting).

counsel," [Petition at 13, 14] is simply unpersuasive.[6]

Defense counsel failed to investigate Mr. Gray's mental or emotional condition at the time of the crime. This omission was particularly egregious because compelling expert testimony in this regard was readily available at no charge if counsel had only

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[6]The Fourth Circuit's analysis is consistent with the fact-based, deferential determinations in other circuits. *See Smith v. Mullin*, 379 F.3d 919, 940 (10th Cir. 2004)(ineffective assistance in not developing and presenting expert mental health evidence "at [counsel's] fingertips"); *Jermyn v. Horn*, 266 F.3d 257, 303-08 (3d Cir. 2001)(ineffective assistance in ignoring available expert opinion regarding defendant's mental illness); *Carter v. Bell*, 218 F.3d 581, 593-96 (6th Cir. 2000)(ineffective assistance in not discovering and offering defendant's history of mental impairments); *Antwine v. Delo*, 54 F.3d 1357, 1367 (8th Cir. 1995(ineffective assistance in failing to investigate defendant's mental illness and present evidence he was bipolar), *cert. denied*, 513 U.S. 1102 (1995); *Brewer v. Aiken*, 935 F.2d 850, 858 (7th Cir. 1991)(ineffective assistance in failing to investigate and present mental health history). There is no division among the circuits warranting certiorari review.

asked. [App. 62-63] But defense counsel did not pursue the avenue. In fact, they never contacted Dr. Lara. One of them received Dr. Lara's report, raised the possibility of further evaluation with the client some six weeks after the alleged offense, got a negative reaction, and never raised the subject again. The other lawyer came into the case later, looked at Dr. Lara's report, and failed to see any possible need for mental health testimony. The two lawyers never once discussed with one another the advisability of securing mental health testimony.

They never communicated with Dr. Lara regarding the significance of his report or his offer to consider further diagnosis upon receipt of information they could have provided without requiring any effort or money from Mr. Gray. Dr. Lara believed Mr. "Gray's mental condition at the time of the evaluation was not significantly worse than it was at the time of the offense." [App. 63] If he had been given these materials, as any component defense counsel would have done, Dr. Lara "would have been able to state with confidence that the alleged offense was committed while Dr. Gray was under the influence of mental or emotional disturbance, and that Dr. Gray's capacity to conform his conduct to the requirements of law was impaired at that time." [App. 63]

Counsel also failed to reconsider the issue of mental health evidence after the jury returned a guilty verdict, neither

requesting a continuance to prepare for sentencing, nor asking Gray to undergo further evaluation in light of the changed circumstances, nor even telephoning Dr. Lara to see what he testimony he might be able to provide. They presented no expert mental health testimony at the capital sentencing hearing, not even Dr. Lara's report which itself supported both mental health statutory mitigating factors.

Dr. Lara was ready, willing, and able to assist in Gray's mitigation effort.[7] In his view, the report he provided to the court and defense counsel showed his opinion Mr. Gray was in serious mental and emotional distress when Dr. Lara examined him only six days after the crime. His diagnosis of an adjustment disorder with mixed disturbance of emotions is a "conditions [that] can lead to serious behavioral problems [and] was quite serious in Dr. Gray's case. Yet Dr. Lara felt his "report convey[ed], as [he] intended it to convey, that [he] could be an important sentencing witness, but [he] would need more information to state an opinion with confidence. I was surprised at the lack of contact from Dr. Gray's attorneys, and assumed that they had obtained a stronger

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[7]From the time of his evaluation of Mr. Gray in December 1992 until his retirement in 1999, long after Mr. Gray's trial and sentencing hearing, Dr. Lara "was employed by the State of North Carolina as a Psychiatrist on the staff of Dorothea Dix Hospital [and] was available to review documents and testify in this case at no charge to Dr. Gray, and would have done so if asked." [App. 61]

psychiatric opinion elsewhere."[8] [App. 61]

Counsel's inadvertent "professional judgment" is a far less reasonable excuse for limiting investigation than the one this Court rejected in *Wiggins*. Wiggins' counsel was aware of the core themes to be explored and testified at a post-conviction hearing that he was aware of his client's sexual abuse. He made a deliberate decision to ignore it and instead pursue a bifurcated sentencing strategy. *Id.* at 528. *Wiggins* held counsel's conscious investigation-limiting strategy was unreasonable, and that the state court rulings to the contrary also were unreasonable. *Id.* at 524-26. Under the controlling teaching in *Wiggins*, the Fourth Circuit properly concluded the utter absence of an investigation-limiting strategy here was unreasonable.

B. Petitioner Offers No Legitimate Basis for this Court's Grant of Certiorari.

Petitioner posits that the lower courts, especially the Fourth Circuit,[9] are "warping" *Strickland* and using *Williams*, *Wiggins*, and

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[8]The state post-conviction court ignored most of these uncontradicted facts. A state court determination of facts is unreasonable, and not entitled to deference, within the meaning of section 2254(d)(2) if it fails to mention critical facts proven by the evidence, *Williams*, 529 U.S. at 397-97, or relies on erroneous factual findings. *Wiggins*, 539 U.S. at 528.

[9]Petitioner's singling out of the Fourth Circuit for this criticism is curious. First, this Court had to reverse the Fourth Circuit in both *Williams* and *Wiggins* for its unacceptably restrictive interpretation of *Strickland*. Second, the Fourth Circuit opinions upon which petitioner bases its criticism are all dissenting opinions. [Petition at 16] Third, the finding of ineffective assistance in this case represents a rare grant of such relief by the Fourth Circuit which usually rejects claims of ineffective assistance of counsel.

(continued...)

Rompilla "as the vehicle to justify the second-guessing of the actions of trial counsel," thereby creating "a no-stone-unturned standard that is in conflict with *Strickland* itself.[10] [Petition at 13-16] This position is without foundation. The cases upon which petitioner relies in a fleeting attempt to create a problematic trend among the circuits to require a "no-stone-unturned mitigation investigation"[Petition at 15] do not support its position. First, *Van Hook* v. *Anderson*, 535 F.3d 458 (6th Cir. 2008), involved multiple failings by counsel including fully investigating an abusive family background, failing to obtain a mental health expert, failing to supervise the preparation of a presentence investigation report, and failing to object to victim impact statements. Moreover, the opinion was vacated en banc on 18 December 2008. Second, *Haliym* v. *Mitchell*, 492 F.3d 680 (6th Cir.

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[9](..continued)
See, e.g., Cagle v. *Branker*, 520 F.3d 320 (4th Cir.), *cert. denied*, 129 S.Ct. 763 (2008); *Meyer* v. *Branker*, 506 F.3d 358 (4th Cir. 2007) *McNeill* v. *Branker*, 476 F.3d 206 (4th Cir.), *cert. denied*, 128 S.Ct. 647 (2007); *Campbell* v. *Polk*, 447 F.3d 270 (4th Cir.), *cert. denied*, 127 S.Ct. 834 (2006). Most recently, the circuit denied a certificate of appealability to even consider this claim. *Peterson* v. *Branker*, No. 07-16 (Order)(4th Cir. 2008).

[10]Petitioner notes "[t]he factual findings of state courts are entitled to a strong presumption of correctness under 28 U.S.C. § 2254(e)(1). [Petition at 13] But this presumption applies only to factual findings and is independent of whether the state court denied relief "based on an unreasonable determination of the facts in light of the evidence presented in the State court proceedings." It is incorrect, as petitioner frequently does, "to merge the independent requirements of § 2254(d)(2) and (e)(1). AEDPA does not require [Mr. Gray] to prove that a decision is objectively unreasonable by clear and convincing evidence." *Miller-El* v. *Cockrell*, 537 U.S. 322, 341 (2003).

2007), specifically relied on *Strickland* and involved not investigating the deprived family background suggested by a mitigation report in counsel's possession and his impaired mental health indicated by the client having shot himself in the head, a fact counsel knew. Third, *Wilson* v. *Sirmons*, 536 F.3d 1064 (10th Cir. 2008), concerned multiple failings such as not timely obtaining a mental health expert, not interviewing a single family member (all of whom were ready and willing to assist) that would have shown delusions, hallucinations, and detachment with reality. Fourth, *Frierson* v. *Woodford*, 463 F.3d 982 (9th Cir. 2006), revealed no investigation of the client's extensive drug history, his mental impairments and brain damage, and his child abuse, all of which were shown in the transcript of the client's prior trial, which counsel never read. The most cursory review of these cases shows the lower courts are following *Strickland* and its progeny. They contradict rather than support petitioner's overstated position.

In short, petitioner misunderstands the basic premise of *Strickland* itself. The adequacy of counsel's performance cannot be assessed only in global terms, asking whether, viewed as a whole, the performance bespoke incompetence. *Strickland* makes it quite plain that, in the context of a claim that counsel failed to investigate pivotal mitigating evidence, an analysis of deficient performance turns not on the reasonableness of what counsel did, but on the reasonableness of what counsel did not do. *Strickland*

did not hold that limitations on investigation are reasonable if counsel generally did an acceptable job. Rather, limitations on investigation are reasonable "only to the extent that 'reasonable professional judgments support the limitations on investigation.'" *Strickland*, 466 U.S. at 690-91.

The Fourth Circuit properly rejected the state court's denial of this claim because it reflected an "unreasonable" application of clearly established federal law under *Strickland* and its progeny. "A state-court decision will also be contrary to this Court's clearly established precedent if the state court confronts a set of facts that are materially indistinguishable from a decision of this Court and nevertheless arrives at a result different from our precedent." *Williams*, 529 U.S. at 406. Defense counsel never contacted Dr. Lara, despite knowing from his report (generated at their request) that he had examined Mr. Gray, could provide a favorable mitigating opinion as to his impaired capacity and emotional disturbance, and had expressly offered to consider additional information in an effort to provide an even more favorable opinion. The state post-conviction court unreasonably ignored these uncontroverted facts. A state court determination of facts is unreasonable within the meaning of section 2254(d)(2) if it fails to even mention critical facts proven by the evidence. *Williams*, 529 U.S. at 397-97, or relies on erroneous factual findings, *Wiggins*, 539 U.S. at 528. Defense counsel's failure

mirrored those this Court found to violate *Strickland* in *Williams*, *Wiggins*, and *Rompilla*. There is no basis for certiorari review.

II. THE FOURTH CIRCUIT'S ADHERENCE TO THE DIRECTIVES OF THIS COURT WHEN IT REJECTED THE UNREASONABLE CONCLUSIONS OF THE STATE COURT REGARDING PROFFERED EXPERT TESTIMONY AND DEFENSE COUNSEL'S POST HOC RATIONALIZATIONS TO WHICH NO DEFERENCE WAS REQUIRED CREATES NO ISSUE WORTHY OF CERTIORARI REVIEW.

Petitioner seeks a writ of certiorari because it disagrees with the level of deference the lower court paid to one, small aspect of the state court ruling. [Petition at 17-23] As noted elsewhere, a state court determination of facts is unreasonable within the meaning of section 2254(d)(2) if it fails to even mention critical facts proven by the evidence, *Williams*, 529 U.S. at 397-97, or relies on erroneous factual findings. *Wiggins*, 539 U.S. at 528. Even assuming petitioner is correct in its assertion as to the quality of the state court determination, it is hardly worthy of certiorari review. Petitioner ignores this Court's observation that "deference does not imply abandonment or abdication of judicial review." *Miller-El v. Cockrell*, 536 U.S. 322, 340 (2003). The Fourth Circuit accorded the state court the deference it deserved.

Initially, Mr. Gray observes that petitioner misstates the record when it characterizes the state court as having found the post-conviction mental health expert "not credible." [Petition at

17] The state court did not make any credibility determination about the expert. Rather, it discounted his opinions in a conclusive way and relied on inaccurate assessments of the evidence presented. [Pet. App. 153a]

Petitioner observes that, unlike most capital defendants, respondent was a prosperous professional with retained counsel who had a normal background and had not been abused. [Petition at 17] Petitioner then leaps to the position that "[t]his is the information possessed by trial counsel, and it is against this base of knowledge that trial counsel's actions are evaluated. [Petition at 17] But petitioner ignores what defense counsel also knew: (1) Mr. Gray made "very agitated" telephone calls and personal visits to Dr. Marshall J. Barker, who expressed his "medical opinion" that Mr. Gray suffered from a "behavioral aberration and psychological problem" that included obsessive compulsion; (2) Mr. Gray's confrontational conduct so alarmed the marital therapist she withdrew; (3) the domestic lawyer for Mr. Gray's wife sought a court order to have him undergo a mental assessment, relying on affidavits from Dr. Barker and Ms. Huber; (4) Mr. Gray was placed on suicide watch and checked by the jail matron every fifteen minutes in the local jail immediately after the crime; (5) defense counsel himself lawyer asked the court to commit Mr. Gray for an evaluation of his capacity to proceed, at the urging of the chief jailer; (6) Mr. Gray was taken to the state psychiatric hospital

where he was housed and evaluated over the next five weeks; (7) Mr. Gray's friend from dental school spoke with him by telephone almost every day and believed he "was damaged emotionally at that point in time [and] not in my viewpoint a hundred percent rational;" (8) Dr. Patricio Lara, a forensic psychiatrist, examined Mr. Gray at the hospital and reviewed the report from the local jail, the results of psychological testing, and telephone interviews with several people, including Mr. Gray's attorney, and had substantial concerns about his mental state; (9) Dr. Lara diagnosed Mr. Gray with "Adjustment disorder with mixed disturbance of emotions and conduct [DSM category] 309.40" and concluded Mr. Gray's conduct during the crime "may have" been influenced by a mental disorder; (10) Dr. Lara found "narcissistic traits with some features of paranoid nature" as well as an "adjustment disorder" and warned that he may have understated the severity of Mr. Gray's mental disorder at the time of the offense; (11) Dr. Lara offered to "to expand" his opinions upon receipt of further information; and (12) Dr. Lara reported that, whatever Mr. Gray's mental condition had been at the time of the offense, it remained sufficiently disturbed upon his discharge that he needed psychiatric treatment to deal with the ongoing court process. Indeed, defense counsel had one conversation with Mr. Gray in which he recommended getting an independent psychiatrist to be on standby, mainly because of what Dr. Lara had written about Mr. Gray's loss of impulse control. For

petitioner to claim "[Mr.] Gray never exhibited any indications of instability" [Petition at 18] borders on the absurd.

Petitioner's distinction between Mr. Gray and other capital defendants depends on two significant, unstated and unsupported assumptions. First, it assumes retained counsel can be held to a lower standard than counsel appointed to represent a capital defendant. Second, it assures "a prosperous professional" is not likely to suffer from any mental illness. Both assumptions are misguided.

With regard to the first assumption, petitioner offers no authority for evaluating the quality of counsel's representation differently if he is retained as opposed to appointed by the court. Nothing in *Strickland* and its progeny distinguishes between retained and appointed counsel. The ABA Guidelines, which articulate "standards to which we have long referred as guides to determining what is reasonable" attorney performance." *Wiggins*, 539 U.S. at 254, do not distinguish between retained and appointed counsel. Indeed, it would be surprising to find a court willing to hold retained counsel to a lesser standard of performance than court-appointed counsel with respect to their efforts to investigate, develop, and present evidence about mental health issues or any other mitigating circumstances in a capital case.

With regard to the second assumption, any person--rich or poor, professional or unemployed, male or female, white or

black-are subject to mental health problems, including a person in a profession who has enjoyed some advantages in life. See S. Richard Lavin, John W. Drumm, Linda K. Keating, "Safeguarding the Mental Health of Dental Professionals," 135 J. Am. Dental Association. Vol. 1 at 84-89 (2004)(dentists, as other professional, prone to psychological illnesses and unlikely to seek treatment); *see also* Stephen L. Braun, "Lawyers and Mental Health," The Houston Lawyer (May/June 1988)(15 to 20 percent of attorneys suffer alcoholism or substance abuse; prone to depression and suicidal thoughts). Defense counsel cannot assume a capital defendant does not suffer from mental health issues merely because he is a professional. More importantly, however, defense counsel cannot ignore indicia of psychological or emotional impairment that present themselves, as were apparent here. That is precisely what occurred and why the Fourth Circuit did not blindly follow the state court's ruling.

The effect on respondent of his marital difficulties and other pressures that underlie many psychological and emotional conditions cannot be determined without a professional evaluation. Defense counsel cannot make that judgment, especially without an appropriate investigation and expert assistance. None occurred here, just as it did not in *Williams*, *Wiggins*, and *Rompilla*.

Petitioner also criticizes the opinions of the mental health expert who testified in the state post-conviction proceeding. The

state court devoted only a few sentences to this evidence. It found the expert's contact with Mr. Gray was in a single assessment six years after the fact and did not include a review of defendants actions and conduct leading up to the crime. [Pet. App. 153a] But the challenge of assessing a criminal defendant's mental state after the fact is a commonplace of forensic psychiatry. It was expressly recognized by Dr. Patricio Lara, the state psychiatrist who saw Gray five days after the homicide, when he stated in his report, "[w]e are aware that we are observing this patient under an extreme situation that may exaggerate personality traits to a level that may appear pathological." It was for this very reason that Dr. Lara's report expressly invited submission of additional information about Gray's conduct before the offense. [App. 36, 63] It was entirely proper for both Dr. Lara and Dr. Bellard to consider after-the-fact professional observations, along with prior lay observations, in their assessment of Gray's mental condition at the time of the offense.

Petitioner also chides the lower court for rejecting the state court's "findings of shortcomings in Dr. Bellard's opinion, saying he was "largely ignorant of any of the facts surrounding the murder." [Petition at 22] But Dr. Bellard had Dr. Lara's report had provided him an in-depth evaluation of Mr. Gray's mental state five days after the homicide, including psychological testing, and it expressly suggested that additional information about Mr. Gray's

mental state before the homicide might warrant additional diagnoses. As he testified at the state post-conviction hearing, Dr. Bellard had been briefed by post-conviction counsel and had reviewed Dr. Lara's evaluation report, Dr. Marshall Barker's affidavit, Marilyn Huber's affidavit, and parts of the trial transcript. Dr. Bellard's affidavit further informed the state post-conviction court that he had also reviewed the appellate opinion of the Supreme Court of North Carolina, which petitioner uses to describe in detail the facts surrounding the crime and the defendant. Dr. Bellard also knew every fact petitioner's counsel suggested to him on cross-examination except a tag being torn from Mr. Gray's shirt. [App. 61] Thus, the state court's erroneous factual assertions, in an order prepared by counsel for petitioner, are not worthy of deference.

The Fourth Circuit accorded the appropriate deference to the state court's ruling, because it was largely incorrect on this issue. There is no compelling reason to review this matter.

III. THE FOURTH CIRCUIT CORRECTLY DETERMINED DEFENSE COUNSEL SHOULD INVESTIGATE READILY APPARENT MENTAL HEALTH MITIGATION WHERE THEIR CLIENT WAS INDIGENT AND EXPERT PSYCHIATRIC ASSISTANCE WAS AVAILABLE AT NO COST.

As noted above, defense counsel ignored signs of Mr. Gray's mental impairment, including a report by a forensic psychiatrist who examined Mr. Gray at counsel's request. He did not pursue any

further mental health mitigation and justified this misfeasance by his client's refusal of one request for funds to hire an expert, a request made long before the death penalty became a possibility and was not thereafter revisited. The state post-conviction court justified this conduct because Mr. Gray was not indigent, counsel had been retained, and counsel was not required to expend his own funds for this expert assistance. [Pet. App. 156a] However, this finding, which is contrary to Mr. Gray having been found indigent by the state trial court and given appointed counsel for his appeal (a fact petitioner blithely omits) is irrelevant and a "red herring" because the critical, undisputed fact is that this expert mental health professional was ready, willing, and able to assist the defense effort at no cost to Mr. Gray. [App. 62-63] Thus, this claim hardly warrants review by certiorari.

Petitioner seems to posit that Mr. Gray cannot fault defense counsel because he was retained. [Petition at 23-24] "A proper respect for the Sixth Amendment disarms petitioner's contention that defendants who retain their own lawyers are entitled to less protection than defendants for whom the State appoints counsel." *Cuyler v. Sullivan*, 446 U.S. 335, 344 (1980). Petitioner neither discusses *Cuyler* nor offers any rationale to suggest it does not eviscerate this claim.[11]

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[11]To the extent petitioner and amicus suggest this Court should revisit *Cuyler*, this issue is not properly before the Court.

(continued...)

Finally, petitioner mistakenly asserts Mr. Gray "prohibited counsel from obtaining a mental health expert or making further inquiry into [his] mental health," in an effort to shoehorn this claim within the ambit of *Schiro v. Landrigan*, 127 S.Ct. 1933 (2007). There is absolutely no factual support for this assertion. Mr. Gray merely told defense counsel on one occasion that he would not spend additional money on a psychiatrist. He never forbade defense counsel from pursuing mitigation, from investigating mental health mitigation, from accepting Dr. Lara's invitation to submit further information for his consideration, from offering Dr. Lara's report at sentencing, from calling Dr. Lara as a witness, or from introducing evidence about his mental condition at the time of the crime. Indeed, the trial court submitted the two mental health mitigating factors to Mr. Gray's jury with his assent, which were rejected. This situation is not even remotely like *Schiro*, where the defendant foiled his counsel's attempt to call any mitigation witnesses, stated on the record he had instructed counsel not to argue any mitigating circumstances, interrupted his counsel to confess additional aggravating circumstances, and expressly invited

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[11](...continued)
Petitioner never advanced a claim that Mr. Gray was not entitled to the effective assistance of counsel because he retained counsel. This defense was never the raised in or advanced as a basis for denying Mr. Gray habeas relief based in ineffective assistance of counsel in either the state post-conviction litigation, the district court, or the Fourth Circuit.

the trial court to impose ta death sentence.[12] 127 S.Ct at 1937-38.

Defense counsel never advised Mr. Gray how mental health evidence might be relevant to his effort to obtain a life sentence. Their one and only conversation about this issue occurred before Mr. Gray was even indicted and long before the case became a capital proceeding. Indeed, they had this conversation when defense counsel was pursuing a plea to second degree murder. To the extent petitioner and amicus suggest Mr. Gray waived his mental health mitigation, he could not have done so in a knowing and intelligent fashion because his lawyer never provided the basic advice on this subject that effective counsel would have given under *Strickland* and its progeny.

The Fourth Circuit's decision was reasonable and in accord with the precedents of this Court and the pertinent circuit decisions. The petition should be denied.

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[12]Furthermore, *Schriro* merely upheld the reasonableness of the state court finding of no prejudice under *Strickland* and took no issue with the view, expressed by both the majority and dissenting views of the en banc Ninth Circuit that trial counsel's sentencing investigation was deficient under *Strickland*, irrespective of the problematic client. 127 S.Ct. at 1945 (Stevens, Jr, dissenting).

CONCLUSION

For the reasons stated herein, William Robert Gray, Jr. respectfully requests that the petition for a writ of certiorari be denied.

RESPECTFULLY submitted this the 5th day of February, 2009.

RUDOLF WIDENHOUSE & FIALKO

M. Gordon Widenhouse, Jr.*
Rudolf Widenhouse & Fialko
312 West Franklin Street
Chapel Hill, North Carolina 27516
Telephone: 919-967-4900

*Counsel of Record

Paul M. Green
Attorney at Law
1304 Carolina Avenue
Durham, North Carolina 27705
Telephone: 919-286-2212

App. 1

File #92CvD311

NORTH CAROLINA

LENOIR COUNTY

FILED IN THE GENERAL COURT OF JUSTICE
92 JUL 27 PM 12:25 DISTRICT COURT DIVISION
LENOIR COUNTY, C.S.C.

ROSLYN S. GRAY,
Plaintiff,

vs.

W. R. GRAY, JR.,
Defendant.

MOTION TO REQUIRE MENTAL AND/OR PHYSICAL EXAMINATION

Plaintiff, pursuant to Rule 35 of the North Carolina Rules of Civil Procedure, respectfully moves this Court for an order directing a mental and/or physical examination of defendant and the minor children of the parties and; in support of said Motion, respectfully shows unto the Court as follows:

1. This action was commenced by plaintiff on or about March 13, 1992 by filing a Complaint and causing a Summons to be issued. In her Complaint, plaintiff seeks, among other things, custody of the minor children of the parties hereto.

2. Since the date of separation of the parties on or about April 10, 1992, the minor children of the parties have resided with defendant in the former marital home located at 2603 Brookhaven Drive, Kinston, North Carolina.

3. Plaintiff has been allowed very little contact with the minor children since the date of separation as defendant has only allowed plaintiff to visit with the children for short periods of time in the former marital home. The children have become increasingly estranged and somewhat hostile toward their mother, the plaintiff herein. This alienation of the affections of the minor children for the plaintiff has been caused by, upon information and belief, defendant's statements to the children that plaintiff is insane, that plaintiff was trying to destroy the family, that plaintiff was trying to "kick daddy out", that plaintiff had assaulted defendant, and that all plaintiff cared about was money. Copies of letters received by plaintiff from her minor children setting forth these allegations are attached hereto as Exhibits A, B, C, D and E,.

respectively. As is obvious from a review of the letters, it is very doubtful that the minor children would write such letters to a parent whom they had previously had a very loving relationship unless they were being coached to do so by defendant. In addition, the letters demonstrate the extreme and immediate need for counselling with the children to foster a continued relationship with their mother, the plaintiff herein.

4. In addition, immediately prior to the separation of the parties, defendant insisted that plaintiff, defendant and the minor children see Marilyn Huber, a family counsellor in Greenville, North Carolina. Following the initial sessions and interviews, plaintiff was informed by Ms. Huber that she had severed her professional relationship with Dr. Gray due to statements made by Dr. Gray regarding his intention to keep the children from their mother in the event there was no reconciliation. (See Affidavit of Marilyn Huber attached hereto as Exhibit F).

5. Further, on or about June 26, 1992, when plaintiff came to the former marital home of the parties located at 2605 Brookhaven Drive, Kinston, North Carolina to visit with the minor children, defendant grabbed plaintiff, dragged her inside the home, choked and assaulted plaintiff resulting in plaintiff having to seek medical treatment for her injuries.

6. Finally, as shown by the Affidavit of Dr. M. Jay Barker attached hereto, defendant has contacted Dr. Barker in his office, to the point of harassment, in an attempt to get Dr. Barker to agree that plaintiff was "mentally ill." (Affidavit of Marshall J. Barker, M.D., attached hereto as Exhibit G). According to Dr. Barker, Dr. Gray's behavior in this regard has been totally inappropriate.

7. As a result of the foregoing, the mental and/or physical condition of the parties, as well as the children in their custody are in controversy and it is therefore necessary that the Court order a mental and/or physical assessment of the parties prior to a hearing on custody in this matter to determine the fitness of the parties, their mental and/or mental condition and the needs of the parties and/or the children for

WHITE & ALLEN, P.A.
ATTORNEYS AT LAW
KINSTON, N.C.

counselling to deal with the dissolution of the marriage of plaintiff and defendant.

WHEREFORE, plaintiff prays that the Court order the parties and the minor children of the parties to submit to a mental and/or physical examination by a duly licensed psychiatrist, psychologist, physician or family therapist as deemed necessary by the Court.

This the 27th day of July, 1992.

WHITE & ALLEN, P.A.
Attorneys for Plaintiff

By: David J. Fillippeli Jr.
David J. Fillippeli, Jr., Attorney
Post Office Box 3169
Kinston, NC 28502-3169
Tel.: (919) 527-8000

NORTH CAROLINA

LENOIR COUNTY

ROSLYN S. GRAY, being first duly sworn, deposes and says, that she is the plaintiff in the above entitled action, that she has read the foregoing document and knows the contents thereof, that the same is true of her own knowledge except as to those matters and things therein alleged upon information and belief, and as to those, she believes them to be true.

Roslyn S. Gray
Roslyn S. Gray

Sworn to and subscribed before me,
this 27th day of July, 1992.

Karen Lee Lane (House)
Notary Public

My commission expires: 10-1-92

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this pleading in the above entitled action upon all other parties to this cause by depositing a copy hereof enclosed in a postpaid wrapper in the United States mail, properly addressed to the attorney or attorneys for said parties.

This 27th day of July, 1992.

David J. Fillippeli Jr. Attorney
For White & Allen, P.A.

WHITE & ALLEN, P.A.
ATTORNEYS AT LAW
KINSTON, N.C.

App. 4

File #92CvD311

NORTH CAROLINA — IN THE GENERAL COURT OF JUSTICE

LENOIR COUNTY — DISTRICT COURT DIVISION

ROSLYN S. GRAY,
Plaintiff

vs.

W. R. GRAY, JR.,
Defendant

AFFIDAVIT

MARSHALL JAY BARKER, M.D., being first duly sworn, deposes and says as follows:

1. That I am a duly licensed physician practicing obstetrics and gynecology in Kinston, Lenoir County, North Carolina.

2. Roslyn S. Gray, plaintiff herein, is a patient of mine.

3. On February 26, 1992, Dr. W. R. Gray, Jr. called me and stated that he and his wife, Roslyn, were having tremendous marital difficulties, that she had had quite a personality change and wondered if it could be hormonal. I informed him that I had seen no evidence of any personality disorders, that I would be happy to talk with either or both of them and suggested that they may seek marital, psychological, or psychiatric counseling if there were problems in the marriage.

4. Thereafter, Dr. Gray persistently called me and made appearances in my office on numerous occasions to discuss my treatment of his wife. Despite my informing him that such discussion would violate physician/patient confidentiality, he continued to make calls and appearances in my office demanding information about his wife. I realized that by his persistence in making appearances and telephone calls, he was trying to gather negative information on his wife. I can see from Dr. Gray's behavioral pattern that the behavioral aberration and psychological problem is with him and not his wife. Finally, on March 24, 1992, I instructed my staff that I would absolutely

EXHIBIT G
PAGE 1 OF 3

not receive any more of Dr. Gray's calls because I thought his behavior was totally inappropriate.

5. In my opinion, Roslyn Gray seems to have a very good handle on dealing with the marital difficulties existing between her and Dr. Gray, is very calm about the situation, and basically her interest is that of the children and how their behavior may be affected by the situation between she and her husband.

6. On June 26, 1992, at approximately 7:45 p.m., Roslyn Gray appeared at my house seeking medical treatment as a result of injuries sustained from being choked. Upon inquiry into the situation, Mrs. Gray stated to me that her husband had choked her almost to the point of passing out. At that time, she was having problems swallowing and continued to salivate but was able to breathe. Upon initial examination, I diagnosed her as having petechial lesions throughout her entire face and forehead. The sclera of her eyes were bloodshot and there had obviously been sclera hemorrhage as a result of the choking. It was very obvious that there was a hand print on the patient's area of the crico thyroid and it appeared to me from the impression on her neck that her assailant had choked her with his right hand. Mrs. Gray told me that Dr. Gray carried out this assault, at least in part, in the presence of her children and that Dr. Gray told her that he "trying to scare her, I could have killed you if I wanted to", however, it was very obvious to me that in a few seconds he would have completed his job whether he intended to or not.

7. Mrs. Gray called me back on June 27, 1992 and further described the sclera hemorrhage in her eye. As a result of the venous backup and circulatory backup from the choking, I determined it was possible that she could have detached retinas in addition to the sclera hemorrhage and strongly suggested that she see an opthamologist for an examination.

EXHIBIT G
PAGE 2 OF 3

App. 6

This the 24 day of July, 1992.

Dr. Marshall Jay Barker
Marshall Jay Barker, M.D.
Affiant

NORTH CAROLINA

Lenoir COUNTY

Personally appeared before me this day MARSHALL JAY BARKER, M.D. and acknowledged to me the due execution of the foregoing instrument for the terms and purposes therein set forth.

Witness my hand and notarial seal, this 24th day of July, 1992.

Jean B Gardner
Notary Public

My commission expires: February 22, 1994

JEAN B. GARDNER NOTARY PUBLIC LENOIR COUNTY, N. C.

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3

EXHIBIT G
PAGE 3 OF 3

App. 7

File #92CvD311

NORTH CAROLINA — IN THE GENERAL COURT OF JUSTICE

LENOIR COUNTY — DISTRICT COURT DIVISION

ROSLYN S. GRAY,
Plaintiff

vs.

W. R. GRAY, JR.,
Defendant

AFFIDAVIT

MARILYN HUBER, being first duly sworn, deposes and says as follows:

1. I am a certified marital and family therapist practicing with Medical Park Associates in Greenville, North Carolina.

2. Shortly before April 2, 1992, I was contacted by Dr. W. R. Gray, Jr., to set up a counseling session with Dr. Gray and his wife, Roslyn S. Gray.

3. I saw both Dr. Gray and Roslyn Gray, together and separately, on April 2, 1992. I saw them again together on April 7, 1992.

4. The initial purpose of the counseling sessions was for marital counseling and to facilitate better communication between Mr. and Mrs. Gray. During our sessions, Mrs. Gray's conduct was, in my opinion, entirely appropriate. Dr. Gray's conduct, however, was challenging, confrontational, arrogant and haughty, and, in my opinion, was not appropriate for the situation.

5. As a result of my counseling sessions with Dr. Gray, I became alarmed at some of the statements and actions of Dr. Gray regarding the children in the event that there is no reconciliation. As a result of these actions, I told Dr. Gray that I would no longer see him in a professional capacity and severed my professional relationship with him. I then informed Mrs. Gray of my concerns regarding her children and suggested that she get psychological counseling for the children to help

EXHIBIT F
PAGE 1 OF 2

them deal with the dissolution of the marriage and the possible pressure of being asserted upon them by their father.

6. I do not feel that I can further set forth the specifics of the statements Dr. Gray made to me during our individual sessions without violating the marital counselor/client privilege. However, these statements did cause me quite a bit of alarm and, in my opinion, should be considered by the Court in determining the issue of child custody.

This July 24 day of July, 1992.

Marilyn Huber
Marilyn Huber, Affiant

NORTH CAROLINA

Pitt COUNTY

Personally appeared before me this day MARILYN HUBER and acknowledged to me the due execution of the foregoing instrument for the terms and purposes therein set forth.

Witness my hand and notarial seal, this 24 day of July, 1992.

Teresa L Waters
Notary Public

My commission expires: March 12, 1996

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My Commission Expires March 12, 1996

EXHIBIT F
PAGE 2 OF 2

App. 9

MAY?

A. YES, SHE DID.

MR. WOOTEN: OBJECTION.

THE COURT: YES OR NO.

A. YES, SIR.

Q. WHAT FEAR DID SHE STATE TO YOU ON THAT OCCASION IN EARLY MAY?

MR. WORTHINGTON: OBJECTION.

THE COURT: OVERRULED. THIS IS AGAIN OFFERED TO SHOW, IF IT DOES, FOR YOU TO DETERMINE HER STATE OF MIND, NOT FOR THE TRUTH OF THE MATTER THAT MAY BE ASSERTED.

A. SHE TOLD ME THAT SHE WAS SCARED AND THAT SHE FEARED THAT BOB WOULD KILL HER BEFORE SHE'D EVER GET HER CHILDREN BACK.

Q. FROM ABOUT LATE APRIL TO ABOUT LATE SEPTEMBER OF 1992, DID YOU HAVE AN OCCASION TO SEE BOB OFTEN? THE DEFENDANT?

A. YES, SIR. WE WERE VERY SURPRISED WHEN HE BEGAN TO COME OVER TO OUR HOUSE EVERY NIGHT. HE AND THE KIDS WERE IN TOWN AND WE WERE IN TOWN. HE WAS AT OUR HOME EVERY DAY, EVERY NIGHT. ONCE DURING THE DAY OR NIGHT.

Q. DURING THIS PERIOD OF TIME, APRIL AND MAY AND RIGHT ON UP TO SEPTEMBER, DID HE APPEAR TO YOU TO ACT LIKE A PERSON IN HIS RIGHT MIND?

A. NO, SIR. HE DIDN'T APPEAR TO BE IN HIS RIGHT MIND TO ME.

Q. HOW DID HE APPEAR TO YOU ON THOSE OCCASIONS?

A. REAL STRANGE-ACTING. REAL-- SAYING JUST CRAZY THING. AND TALKING ABOUT THE VIOLENT THINGS THAT HE WOULD LIKE TO DO AND WISH HE COULD DO.

Q. WHAT DID HE TELL YOU ABOUT THE VIOLENT THINGS HE WOULD LIKE TO DO AND WISH HE COULD DO?

A. TOLD ME THAT HE WISHED THAT-- AS AN EXAMPLE: TOLD ME THAT HE WISHED THAT THEY-- AND WE WERE TALKING ABOUT THE COURTS AND CUSTODY --WISHED THEY WOULD GIVE THEM BOTH GUNS AND LOCK THEM IN A ROOM AND JUST LET THEM GO TO IT UNTIL IT WAS OVER FOR ONE OF THEM.

Q. WHAT DID HE SAY HE WOULD DO IF THEY WERE PUT IN A ROOM WITH GUNS?

A. THAT HE WOULD KILL HER.

THE COURT: THEM? WHO DO YOU MEAN "THEM"?

A. I BEG YOUR PARDON?

THE COURT: THEM? I DON'T KNOW WHAT--

A. THAT HE WOULD KILL HER.

THE COURT: HER?

A. YES, SIR. NO. THE "THEM" THAT HE WAS TALKING ABOUT WAS WISH THAT THE COURTS WOULD PUT THEM IN A ROOM TOGETHER.

THE COURT: YOU MEAN HE AND HIS WIFE?

A. HE AND HIS WIFE. YES. AND GIVE THEM BOTH GUNS. AND THEN HE-- HE LAUGHED. HE SAID, WELL, THEY WOULDN'T HAVE TO GIVE ME ONE. I'VE GOT A PISTOL ALREADY. I'M READY.

Q. HOW DID HE CHARACTERIZE HER IN FRONT OF THE CHILDREN

THAT THE FAMILY WAS BROKEN UP, HOW HIS CHILDREN WERE GOING TO BE IN LIFE, WHAT WAS GOING TO HAPPEN WITH THEIR LIFE. YOU KNOW, HOW-- WERE THEY GOING TO BE EVER HURT BY THIS, BY THE BREAK UP OF THE FAMILY AND THE LOSS OF THEIR MOTHER.

Q. DID HE CONFIDE IN YOU HIS FEELINGS ABOUT THE LOSS OF ROSLYN GRAY?

A. YES.

MR. JACOBS: OBJECT.

THE COURT: VOIR DIRE. TAKE THE JURY OUT.

(THE JURY WAS EXCUSED AT 12:21.)

THE COURT: PROCEED.

DIRECT EXAMINATION OF DR. CHRISTOPHER FLOYD ON VOIR DIRE BY MR. WORTHINGTON:

A. DO I ANSWER NOW?

Q. DID HE EVER CONFIDE IN YOU HIS FEELINGS ABOUT THE LOSS OF ROSLYN GRAY?

A. YES.

Q. WHAT WERE HIS FEELINGS?

A. SHE WAS HIS CHILDREN'S MOTHER. THE FAMILY WOULD NEVER BE BACK TOGETHER. AND HE WAS CONCERNED FOR HIS CHILDREN.

THE COURT: ANY OTHER QUESTIONS ON HIS--

MR. WORTHINGTON: JUST GIVE ME A MOMENT.

THE COURT: -- TALKING ABOUT MRS. GRAY?

Q. BASED UPON YOUR VARIOUS TELEPHONE CONVERSATIONS WITH HIM WERE YOU ABLE TO FORM AN OPINION SATISFACTORY TO YOURSELF AS

TO THE STATE OF MIND OF BOB GRAY DURING THE TELEPHONE CONVERSATIONS YOU HAD WITH HIM?

A. (NO RESPONSE.)

Q. JUST ANSWER WHETHER OR NOT YOU WERE ABLE TO FORM AN OPINION.

A. YES.

Q. AND WHAT WAS THAT OPINION?

A. HE WAS DAMAGED EMOTIONALLY AT THAT POINT IN TIME. HE WAS NOT IN MY VIEWPOINT A HUNDRED PERCENT RATIONAL. HE WAS--

Q. YOU SAY HE WAS NOT A HUNDRED PERCENT RATIONAL, WHAT DO YOU MEAN BY THAT?

THE COURT: I JUST HAD A VOIR DIRE ON HIM TALKING ABOUT THE DECEASED. THAT'S WHAT THE VOIR DIRE IS ABOUT.

MR. WORTHINGTON: ALL RIGHT.

THE COURT: DO YOU KNOW OF ANY OTHER--

Q. STATE WHETHER OR NOT BASED ON--

THE COURT: IF YOU KNOW OF ANY OTHER VOIR DIRE AREAS, YOU KNOW, I'LL BE GLAD TO INTO THEM.

Q. STATE WHETHER OR NOT BASED ON YOUR PHONE CONVERSATIONS AND OBSERVATIONS OF HIS STATE OF MIND, HE CONFIDED IN YOU AS TO HIS STATE OF MIND CONCERNING HIS FEELINGS ABOUT THE LOSS OR SADNESS OR REMORSE, OR DID HE HAVE ANY FEELINGS ABOUT THE LOSS OF ROSLYN GRAY?

A. I THINK I ANSWERED THAT BEFORE. BUT, YOU KNOW, IT WAS THE BREAK UP-- IT WAS THE-- HIS CHILDREN WERE GOING TO BE

DAMAGED, YOU KNOW, THERE MOTHER IS GONE.

THE COURT: ALL RIGHT. ANY CROSS ON THIS AREA?

MR. JACOBS: NONE.

THE COURT: CALL THE JURY BACK IN.

(THE JURY RETURNED TO THE COURTROOM AT 12:24.)

(ALL MEMBERS OF THE JURY ARE PRESENT.)

(THE DEFENDANT, BOTH DEFENSE COUNSEL, THE D.A. AND THE ASSISTANT D.A. ARE PRESENT.)

THE COURT: REPEAT THE LAST QUESTION, MR. WORTHINGTON.

CONTINUED DIRECT EXAMINATION OF DR. CHRISTOPHER FLOYD BY MR. WORTHINGTON:

Q. STATE WHETHER OR NOT DURING YOUR TELEPHONE CONVERSATIONS WITH BOB GRAY, WHETHER OR NOT HE CONFIDED IN YOU IN HIS FEELINGS CONCERNING THE LOSS OF ROSLYN GRAY.

A. HE DID.

Q. WHAT WAS CONFIDED IN YOU?

A. HE WAS CONCERNED THAT HIS FAMILY WAS LOST AND HIS CHILDREN WERE NOT GOING TO HAVE A MOTHER AND HOW THEY WERE GOING TO BE.

Q. STATE WHETHER OR NOT DURING THOSE TELEPHONE CONVERSATIONS YOU WERE ABLE TO FORM AN OPINION AS TO THE STATE OF MIND OF BOB GRAY DURING THOSE TELEPHONE CONVERSATIONS.

A. I WAS. I'M SORRY. I WAS TRYING TO THINK OF THE NEXT QUESTION. I WAS ABLE TO DETERMINE.

PHOTOGRAPH THAT THEY COULD REMEMBER THEIR MOTHER WITH.

IT WOULD BE THE LAST TIME-- AND THEY DID NOT ATTEND THE FUNERAL. THEY WERE ASKED-- I BELIEVE THEY WERE STILL STAYING AT YOUR RESIDENCE, AND THEY WERE ASKED IF THEY'D LIKE TO GO AND THEY DID NOT FEEL LIKE THEY WANTED TO AT THE TIME. BUT I ASKED THAT A PICTURE BE TAKEN.

AT SOME POINT IN TIME, THEY MAY WANT THAT PICTURE. THEY MAY NOT, BUT IT'S BEEN PUT UP FOR THEM IF THEY EVER DECIDE THEY WANT IT.

Q. STATE WHETHER OR NOT YOU OFFERED TO TAKE THE CHILDREN TO THE FUNERAL.

A. YES, SIR, I DID. I OFFERED TO TAKE THEM THERE.

Q. THE 30TH OF NOVEMBER, 1992, THAT WAS THE DAY THAT YOU VISITED BOB IN JAIL, WHEN HE FAINTED, IS THAT CORRECT?

A. YES, SIR, IT WAS.

Q. TO YOUR KNOWLEDGE, IS THAT ALSO THE DAY THAT THE POLICE DEPARTMENT WAS GIVEN ANOTHER CONSENT TO SEARCH THE GRAY RESIDENCE ON BROOKHAVEN DRIVE?

A. I REMEMBER THERE BEING AN ADDITIONAL SEARCH CONSENTED TO, BUT I DO NOT RECALL THE EXACT DATE, SIR.

Q. THE POWER OF ATTORNEY THAT YOU HAVE, YOU DIDN'T GO INTO THAT SAFE WITH THAT POWER OF ATTORNEY UNTIL ABOUT THE MIDDLE OF DECEMBER, IS THAT CORRECT?

A. YES, SIR. THE THINGS IN THE SAFE, I FELT LIKE, WOULD BE SECURE. I WAS MORE CONCERNED WITH GETTING ANYTHING THAT WAS

LAYING LOOSE OR STUFF IN THE CABINETS, LITTLE FILE TYPE THING, TRYING TO GET THE LOOSE PIECES TOGETHER.

Q. AT THE TIME THAT YOU HAD GONE INTO THE SAFE, WERE YOU AWARE THAT DETECTIVE PAT SMITH AND SEVERAL OFFICERS FROM THE KINSTON POLICE DEPARTMENT HAD ALREADY GONE INTO THE GUN SAFE?

A. NO, SIR, I WASN'T.

Q. YOU HAD SOME CONVERSATIONS WITH BOB GRAY ABOUT BEING TRUSTEE OF HIS TRUST, IS THAT CORRECT?

A. YES, SIR, I DID.

Q. DO YOU KNOW WHY HE WANTED YOU TO BE THE-- WHY HE WANTED THE TRUST?

A. MR. GRAY SAID HE HAD A NUMBER OF ASSETS THAT AT THAT POINT OF TIME HE WANTED TO LEAVE TO HIS CHILDREN. THERE WAS SOME CONTENTION ABOUT THE SETTLEMENT OF THE MARITAL ESTATE. I DON'T KNOW ALL THE DETAILS THERE. BUT HE ASKED ME IF I WOULD BE WILLING TO, IN ADDITION TO LOOKING AFTER THE PROPERTY, BE WILLING TO BE IN CHARGE OF THE THINGS HE WANTED TO PUT INTO TRUST FOR HIS CHILDREN.

Q. STATE WHETHER YOU WERE AWARE THAT A CIVIL LAWSUIT HAD BEEN FILED AGAINST MR. GRAY BY MRS. GRAY'S ESTATE TO COLLECT MONEY FROM HIM.

A. I HEARD ABOUT THE SUIT AT SOME POINT IN TIME, SIR.

Q. WHAT WAS MR. GRAY'S STATE OF MIND, IF YOU KNOW, ABOUT THE SUIT?

MR. JACOBS: OBJECT.

EVIDENCE OUTSIDE OF HOLLOWELL OR WITH HOLLOWELL OF ANY STATEMENTS BY THE DEFENDANT SHOWING THAT HE WANTED AN IRREVOCABLE TRUST TO KEEP THE LAWYERS FROM GETTING A SLICE OF THE ESTATE? I MEAN--

MR. WORTHINGTON: WHAT HE TOLD TO HIS ATTORNEYS, WHAT HE TOLD ME, AND WHAT WAS TOLD TO THE ATTORNEY EVERETT WOOTEN OF THE FIRM OF WOOTEN AND COLEY THAT PREPARED THE TRUST.

THE COURT: WELL, YOU KNOW, I'M SURE YOU'VE GOT GOOD FAITH FOR YOUR OWN COMMUNICATIONS WITH HIM, BUT I CAN'T ALLOW THAT.

MR. WORTHINGTON: TO MY KNOWLEDGE, MR. HOLLOWELL WAS TOLD BY MR. GRAY.

MR. JACOBS: YOUR HONOR, NO MATTER WHAT HIS STATE OF MIND WAS AT THAT POINT IN TIME, THERE ARE LEGALITIES ABOUT WHETHER OR NOT HE CAN MANEUVER IN THAT FASHION. AND ALL OF THAT IS SUBJECT TO ATTACK AND ALL OF THAT IS SUBJECT TO SUITS.

IT IS NOT OPERATING-- IF HE IS THE SLAYER, HE IS NOT OPERATING WITH CLEAN HANDS UNDER THOSE SITUATIONS. AND I DON'T CARE WHAT THE WRITTEN LAW IS. THERE IS AN EQUITY SIDE TO THE COURT THAT CAN GO IN AND START BALANCING THE EQUITIES.

MR. WOOTEN: WELL, YOUR HONOR, I'D LIKE TO JUST RESPOND TO THAT VERY QUICKLY. IF THAT BE THE CASE, IF THAT IS WHAT CONFUSES THE JURY, THEN DON JACOBS HAS JUST DONE THAT BECAUSE HE'S GONE THROUGH-- HE'S ASKING TO LIST ALL THESE PIECES OF PROPERTY, WHICH THIS MAN IS NOT ENTITLED TO IF HE'S

App. 17

CONVICTED, SO HE'S PICKING OUT OF BOTH SIDES OF HIS FACE.

MR. JACOBS: I AM NOT. AND THEY'RE IGNORING THE POINT. THE POINT AND THE WHOLE THRUST AND EVERYTHING I DID WAS THAT HE OWNED THIS PROPERTY AT THE TIME OF HER DEATH.

MR. WORTHINGTON: YOUR HONOR--

MR. JACOBS: AND HE HAS MANAGED IT FOR THE PURPOSE OF BIAS. NOW, THERE'S NO OTHER INFERENCE.

THE COURT: IF AN IRREVOCABLE TRUST WAS SET UP BY THE DEFENDANT AFTER THE DEATH, SHOULD HE BE ADJUDICATED GUILTY CRIMINALLY-- OF COURSE, THE OTHER POSSIBILITY IS THIS IS JUST AS EQUALLY VALID, BUT FOR THE SAKE OF ARGUMENT, COULD-- HE CAN ONLY-- HIS-- HE CAN BE INDICTED. I WONDER IF THAT WOULD HAVE ANY EFFECT FOR HIS ABILITY TO SET UP AN IRREVOCABLE TRUST--

MR. WORTHINGTON: YOUR HONOR, LET ME TELL YOU WHAT EXACTLY THE LAW IS. I HAVE IT RIGHT HERE.

THE COURT: --AND TO WHAT EXTENT WOULD IT BIND HER PROPERTY, HER HALF OF IT? GO AHEAD.

MR. WORTHINGTON: IT DOES NOT BIND HER HALF. IT ONLY-- YOU CAN ONLY TRANSFER WHAT YOU OWN: YOUR INTEREST IN A PROPERTY. I CAN TRANSFER TO YOU THIS COURTHOUSE, BUT IF I DON'T HAVE ANY INTEREST, YOU DON'T GET IT. I CAN ONLY TRANSFER TO YOU WHAT RIGHT, TITLE, AND INTEREST THAT I MAY HAVE.

MR. JACOBS IS A PROSECUTOR. HE DOESN'T PRACTICE CIVIL LAW. AND GENERAL--

THE COURT: WELL, LET'S DON'T GET INTO THAT.

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VOICE, PLEASE.

Q. STATE YOUR FULL NAME, PLEASE.

A. VALARIA HICKS.

Q. OKAY. CAN YOU SPEAK UP JUST A LITTLE BIT?

A. VALARIA HICKS.

Q. HOW ARE YOU EMPLOYED, MS. HICKS?

A. I'M A MATRON AT THE LENOIR COUNTY JAIL.

Q. HOW LONG HAVE YOU BEEN EMPLOYED IN THAT JOB?

A. ABOUT THREE YEARS AND A HALF.

Q. WERE YOU EMPLOYED IN THAT JOB ON NOVEMBER THE 25TH AND 26TH OF 1992?

A. YES.

Q. AND AS PART OF YOUR JOB, WHAT ARE YOUR DUTIES IN THE JAIL?

A. BOOKING INMATES. IF IT'S A FEMALE, YOU SEARCH THEM, YOU COUNT IN THEIR PERSONAL PROPERTY, AND LET THEM MAKE A PHONE CALL IF THEY WISH. IF IT'S A MALE, YOU HELP OUT IN THE PAPERWORK.

Q. NOW, ON NOVEMBER THE 26TH OF 1992, DID YOU SEE WILLIAM ROBERT GRAY, JR.?

A. YES.

Q. AND WHERE DID YOU SEE HIM?

A. IN LENOIR COUNTY JAIL.

Q. AND WHERE EXACTLY IN THE JAIL DID YOU SEE HIM?

A. WHEN HE WAS BROUGHT IN, HE WAS IN THE BOOKING AREA.

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AFTER BEING SEARCHED, HE WAS PLACED IN THE HOLDING CELL.

Q. AND WAS HE EVER MOVED FROM THE HOLDING CELL?

A. YES.

Q. AND WHERE WAS HE PLACED?

A. "J" TO JUVENILE. IN THE SECOND CELL.

Q. NOW, WHERE ARE THE JUVENILE CELLS LOCATED IN RELATION TO THE FEMALE QUARTERS?

A. A FEW STEPS DOWN FROM EACH OTHER.

Q. NOW, WHEN MR. GRAY WAS PUT IN THE JUVENILE CELL, WAS HE CHECKED ON A REGULAR BASIS?

A. HE WAS CHECKED EVERY FIFTEEN MINUTES.

Q. AND DO YOU KNOW WHO CHECKED HIM AT THAT TIME?

A. I DID.

Q. AND WHY DID YOU CHECK HIM AS OPPOSED TO A MALE JAILER?

A. BECAUSE IT WAS ON MY WAY TO THE FEMALE-- I DON'T GO IN THE CELL BLOCK, THE REGULAR MEN'S CELL BLOCK, BUT JUST LOOKING INTO THE WINDOW, I CAN DO.

Q. OKAY. AND WHAT TIME DID YOU COME TO WORK THAT EVENING?

A. AT 6:00.

Q. 6:00 IN THE EVENING?

A. UH-HUH.

Q. AND DID YOU STAY THERE UNTIL WHAT TIME THAT--

A. 6:00 IN THE MORNING.

Q. OKAY. AND APPROXIMATELY HOW MANY TIMES DID YOU GO AND

CHECK ON MR. GRAY DURING YOUR SHIFT?

A. WELL, LET'S SEE. IT WAS THREE CHECKS MADE IN AN HOUR. THAT WOULD MAKE TWENTY-ONE CHECKS. ABOUT FIFTY-THREE TIMES, I GUESS.

Q. EXCUSE ME?

A. ABOUT FIFTY-THREE TIMES, I GUESS. HE WAS CHECKED THREE TIMES WITHIN AN HOUR.

Q. OKAY. AND HOW WAS HE DRESSED AT THE TIME YOU WENT AND CHECKED ON HIM IN THE JUVENILE CELL?

A. UNDERWEAR.

Q. AND DID YOU HAVE AN OCCASION TO TALK TO HIM DURING ANY OF THESE FIFTY-THREE CHECKS THAT YOU MADE UPON HIM?

A. NO.

Q. DID YOU KEEP A LOG OF WHAT YOU OBSERVED ABOUT MR. GRAY AT THAT TIME ON NOVEMBER THE 26TH OF 1992?

A. YES.

Q. HAVE YOU HAD AN OPPORTUNITY TO LOOK AT THAT LOG TODAY?

A. YES.

Q. DID YOU FORM AN OPINION SATISFACTORY TO YOURSELF AS TO HIS MENTAL CONDITION ON NOVEMBER 26TH OF 1992?

A. YES.

Q. AND DID YOU MAKE A NOTATION OF THIS OPINION?

A. YES.

Q. AND WHAT WAS YOUR OPINION ON THAT DATE?

A. I PUT UP THERE THAT HE WAS VERY DEPRESSED.

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Q. EXCUSE ME? CAN YOU SPEAK UP?
A. I PUT UP HERE THAT HE WAS VERY DEPRESSED.
Q. HOW DID YOU WRITE THE WORD "VERY"?
A. IN CAPITAL LETTERS.
Q. EVERY LETTER WAS IN ALL CAPS?
A. IN "VERY."
Q. OKAY. AND THE OTHER NOTATIONS, DID YOU WRITE THAT IN THE UPRER AND LOWERCASE LETTERS?
A. DEPRESSED?
Q. YES.
A. NO.
Q. YOU WROTE "DEPRESSED" IN LOWERCASE LETTERS?
A. RIGHT.
Q. NOW, AFTER NOVEMBER 26 OF 1992, DID YOU WORK ANY MORE THAT WEEK?
A. I FEEL LIKE I DIDN'T.
Q. AND DID YOU HAVE OCCASION TO SERVE MEALS TO MR. GRAY?
A. YES.
Q. DID YOU HAVE OCCASION TO TALK TO HIM?
A. HE DIDN'T SAY ANYTHING.
Q. THE MEALS, DO YOU REMEMBER ANYTHING ABOUT THOSE?
A. HE DIDN'T EAT MOST OF HIS FOOD. HE DIDN'T.
Q. I'M SORRY. I CAN'T HEAR YOU.
A. HE DIDN'T EAT MOST OF HIS FOOD.
Q. DID YOU HAVE OCCASION TO OBSERVE HIS SLEEP HABITS?

A. HE SLEPT QUITE MUCH.
Q. I THINK YOU'RE GOING TO NEED TO SPEAK UP. I DON'T THINK ANYBODY CAN HEAR YOU.
A. OKAY.
Q. WHAT WAS THE LAST THING YOU SAID?
A. HE SLEPT QUITE MUCH.
Q. OKAY. DO YOU REMEMBER ANYTHING ELSE ABOUT DR. GRAY DURING THE MONTH OF NOVEMBER OF 1992 THAT YOU OBSERVED PERSONALLY YOURSELF?
A. NO.
MR. WOOTEN: I HAVE NO OTHER QUESTIONS AT THIS TIME.
CROSS-EXAMINATION BY MR. JACOBS:
Q. YOU'VE USED SOME NOTES TO TESTIFY FROM?
A. I WAS CHECKING MYSELF.
Q. MAY I SEE WHAT YOU'VE USED?
A. UH-HUH. (WITNESS HANDS NOTES TO MR. JACOBS.) THAT'S IT.
Q. DO YOU HAVE YOUR INITIAL SCREENING REPORT WITH YOU?
A. I SURE DON'T.
Q. THEY DID NOT ASK YOU TO BRING THAT UP?
A. WHAT DID YOU SAY?
Q. WERE YOU NOT ASKED TO BRING THE RECEIVING SCREENING FORM UP WITH YOU?
A. NO. NOBODY DIDN'T TELL ME TO.
Q. WHAT IS THAT?

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A. YES, SIR.

Q. AND HOW IS THAT FILE CHARACTERIZED OR NUMERICALLY SHOWN?

A. WELL, I HAVE TWO OTHER FILES.

Q. DO YOU HAVE THE ONE WHERE JOHN C. ARCHIE IS THE PLAINTIFF IN A CIVIL ACTION?

A. YES, SIR.

Q. AGAIN, IS THAT PART OF THE PUBLIC RECORDS THAT YOU MAINTAIN IN YOUR OFFICE?

A. YES, SIR.

Q. INCLUDED IN THERE, IS THERE A COPY OF A DOCUMENT CAPTIONED, "LIS PENDENS"?

A. YES, SIR.

Q. WHAT IS THE FILE NUMBER?

A. 92-CVS-- EXCUSE ME. I'M SORRY. IT'S 92-M-1098.

Q. THIS IS A YES OR NO QUESTION. DO YOU KNOW WHAT A LIS PENDENS IS?

A. I'M NOT REAL FAMILIAR WITH THEM. NO, SIR. I DON'T DEAL THAT MUCH WITH THEM.

Q. OKAY. THE LIS PENDENS THAT YOU HAVE BEFORE YOU, CAN YOU JUST READ TO US WHAT IT SAYS?

A. YES, SIR. "THIS NOTICE OF LIS PENDENS FILED WITH THE CLERK OF SUPERIOR COURT OF LENOIR COUNTY SHOWS:

1. THAT A CIVIL ACTION HAS THIS DAY BEGUN IN THE SUPERIOR COURT OF LENOIR COUNTY IN WHICH JOHN C. ARCHIE,

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ADMINISTRATOR OF THE ESTATE OF ROSLYN SAGE GRAY IS PLAINTIFF AND WILLIAM ROBERT GRAY, JR., IS THE DEFENDANT;

2. THAT THE OBJECT OF THIS ACTION, IN PART, IS FOR A DECLARATORY JUDGMENT DECLARING AND FINDING THAT THE DEFENDANT IS A SLAYER UNDER THE PROVISIONS OF ARTICLE III, CHAPTER 31A OF THE NORTH CAROLINA GENERAL STATUTES, AND THAT THE PROVISIONS OF ARTICLE III, CHAPTER 31A OF THE NORTH CAROLINA GENERAL STATUTES APPLY TO THE DEFENDANT;

3. THAT SUCH A DECLARATORY RULING WILL INVOLVE AND EFFECT THE TITLE TO CERTAIN REAL" PROPERTY-- EXCUSE ME "--WILL EFFECT THE TITLE TO CERTAIN REAL ESTATE HELD BY ROSLYN SAGE GRAY AND THE DEFENDANT AS TENANTS BY THE ENTIRETY AT THE TIME OF ROSLYN SAGE GRAY'S DEATH, IN THAT THE DEFENDANT WOULD FORFEIT CERTAIN RIGHTS WITH RESPECT TO THOSE ENTIRETIES PROPERTY.

THE PROPERTIES AFFECTED ARE AS FOLLOWS:

A. THAT LOT LYING IN KINSTON TOWNSHIP, LENOIR COUNTY, NORTH CAROLINA, AND MORE PARTICULARLY DESCRIBED AS LOT 6, BLOCK B, WESTWOOD, AND MORE PARTICULARLY DESCRIBED IN THAT DEED RECORDED AT BOOK 726, PAGE 555, IN THE OFFICE OF THE REGISTER OF DEEDS OF LENOIR COUNTY.

B. THAT LOT LOCATED IN KINSTON TOWNSHIP, LENOIR COUNTY, NORTH CAROLINA, AND MORE PARTICULARLY DESCRIBED AS LOT 11, BLOCK B, WESTWOOD II, AND MORE PARTICULARLY DESCRIBED IN THAT CERTAIN DEED RECORDED IN BOOK 761, PAGE 404, IN THE OFFICE OF THE REGISTER OF DEEDS OF LENOIR COUNTY, NORTH CAROLINA.

C. THAT LOT LOCATED IN THE CITY OF KINSTON, LENOIR COUNTY, NORTH CAROLINA, AND MORE PARTICULARLY DESCRIBED IN THAT CERTAIN DEED RECORDED IN BOOK 667, PAGE 293, OF THE LENOIR COUNTY REGISTRY.

D. THAT LOT BEING LOCATED IN THE CITY OF KINSTON, LENOIR COUNTY, NORTH CAROLINA, AND MORE PARTICULARLY DESCRIBED IN THAT CERTAIN DEED RECORDED IN BOOK 882, PAGE 792, IN THE OFFICE OF THE REGISTER OF DEEDS OF LENOIR COUNTY, NORTH CAROLINA.

E. THAT LOT LOCATED IN LENOIR COUNTY, NORTH CAROLINA, AND MORE PARTICULARLY DESCRIBED IN BOOK 850, PAGE 116, IN THE OFFICE OF THE REGISTER OF DEEDS OF LENOIR COUNTY, NORTH CAROLINA.

THIS NOTICE OF LIS PENDENS IS FILED UNDER THE PROVISIONS OF 1-116 OF THE GENERAL STATUTES OF NORTH CAROLINA AND ALL PERSONS WILL TAKE NOTICE OF THE SAME.

THIS THE 21ST DAY OF DECEMBER, 1992. WHITE & ALLEN, P.A., ATTORNEYS FOR PLAINTIFF, BY DAVID J. FILLIPPELI, JR., ATTORNEY."

Q. NOW, DAVID FILLIPPELI, IS THAT THE SAME LAWYER REFERRED TO THAT PRACTICES WITH WHITE & ALLEN?

A. YES, SIR.

Q. IS THAT THE SAME LAWYER WHO SIGNED SOME OF THE DOMESTIC PLEADINGS YOU'VE PREVIOUSLY TESTIFIED TO?

A. YES, SIR.

STATE OF NORTH CAROLINA

Lenoir County

File No.

In The General Court Of Justice
☒ District ☐ Superior Court Division

STATE VERSUS

Defendant: Will. Ann Robert Gray

MOTION AND ORDER COMMITTING DEFENDANT TO DOROTHEA DIX HOSPITAL

G.S. 15A-1002

Offense: capital charge of Murder

MOTION QUESTIONING DEFENDANT'S CAPACITY TO PROCEED

The undersigned moves that the above named defendant be examined to determine whether by reason of mental illness or defect he is unable to understand the nature and object of the proceedings against him, to comprehend his own situation in reference to the proceedings, and to assist in his defense in a rational or reasonable manner. The specific conduct that leads the moving party to question the defendant's capacity to proceed is as follows: Appears in state of shock and unable to understand seriousness of the situation.

Date: 11-30-92

Signature: Bob A Walker Jr

☐ Prosecutor ☒ Defendant's Attorney ☐ Judge

CERTIFICATE OF SERVICE BY MOVING PARTY

I certify that a copy of this motion was served by:

☒ delivering a copy personally to the
☐ defendant's attorney ☒ prosecutor ☐ defendant

☐ depositing a copy, enclosed in a postpaid properly addressed wrapper, in a post office or official depository under the exclusive care and custody of the U.S. Postal Service directed to the
☐ defendant's attorney ☐ prosecutor ☐ defendant

☐ leaving a copy at the office of the
☐ defendant's attorney with an associate or employee ☐ prosecutor with an associate or employee

Name And Title Of Person With Whom Copy Left: Sheila J Pate ADA

☒ Service accepted by:
☐ defendant's attorney ☒ prosecutor ☐ defendant

Signature Of Person Accepting Service: Sheila J Pate

Date Served: 11-30-92

Name Of Moving Party: Bob A Walker Jr

Title: Atty

AOC-CR-226
Rev. 11/85

Original-File Copy-Hospital Copy-Moving Party Copy-Opposing Party

ORDER COMMITTING DEFENDANT TO DOROTHEA DIX HOSPITAL

A motion questioning the defendant's capacity to proceed having been made and considered, the court finds that the defendant's capacity to proceed is in question. The court orders that the defendant be committed to Dorothea Dix Hospital for a period not to exceed sixty (60) days for observation and treatment, pursuant to G.S. 15A-1002, to determine the question of the defendant's capacity to proceed.

☐ The defendant HAS been screened by a certified Forensic Screening Examiner.

☒ The defendant HAS NOT been screened by a certified Forensic Screening Examiner.

The Director of Dorothea Dix Hospital must direct his report on the defendant's condition to the defense attorney and the Clerk of Superior Court.

The Sheriff of this County shall transfer the defendant to Dorothea Dix Hospital and shall return him when notified by the hospital that the period of observation has been completed.

Date: 11-30-92

Signature Of Presiding Judge

Name Of Judge (Print Or Type)

Defendant's Attorney

Address

City, State, Zip

Telephone No.

RETURN OF SERVICE

I certify that this Order was received and served as follows:

☐ By transporting the defendant to Dorothea Dix Hospital

☐ Other (specify)

Date Served

Date Received | Date Of Return | Name Of Sheriff

County Of Sheriff | Deputy Sheriff Making Return

AOC-CR-208, Side Two
Rev. 11/85

NORTH CAROL..A DIVISION .. MENTAL HEALTH/DEVELOPMENTAL DISABILITIES/ 'UBSTANCE ABUSE SERVICES

Dorothea Dix Hospital
Paleigh, North Carolina

DDH	SPR	FOR
39-86-79	GRAY, WILLIAM ROBERT	
PROT WMW	COO 12-01-92	
07-14-48	LENOIR	

Court File No. Not Given

CONFIDENTIAL AND PRIVILEGED
For Professional purpose only
Not for Publication - Not to be used
Against the Patient's Interests
Re-disclosure Prohibited by
Law without Client Consent

DISCHARGE SUMMARY

FORENSIC PSYCHIATRIC HISTORY & EVALUATION LEGAL ASSESSMENT/DISCHARGE SUMMARY AND AFTERCARE PLAN

Date of Admission: 12-01-92

Date of Discharge:

Date of Dictation: 12-29-92

Correspondent: Bob Worthington, Attorney
P.O. Box 756
Kinston, North Carolina 28501
Phone: (919) 523-2114

IDENTIFYING DATA: This is the first Dorothea Dix Hospital admission for this 44 years old, white, widowed male patient who was admitted on court order from Lenoir County requesting evaluation of his capacity to proceed in regards to pending charges of murder. This patient reported past employment as a dentist. He was full-time employed in a professional capacity. He reported graduate level of education. He was living in a private residence until the time of his arrest. His attorney is Mr. Bob D. Worthington, P.O. Box 756, Kinston, North Carolina 28501, Phone No. (919) 523-2114.

IDENTIFICATION OF DATA BASIC TO OPINIONS: Opinions included in this report are based on direct interviews with the patient, observation of his behavior on the ward, physical examination, and psychological testing. This patient was not cooperative with specimens for laboratory testing and he refused x-rays. PPD test was also refused. Mr. Dennis Meachum, Forensic Case Specialist, presented to me information obtained through contacts made with the patient's attorney, the arresting officer, the Lenoir County Jail and Mr. Donald Hollowell the patient's friend. We attempted to contact the counselor who saw the patient on one opportunity in relation to his marital difficulties. We were not able to establish contacts since this person was on vacation until January.

MENTAL STATUS: Admission mental status on December 1, 1992 presented this patient appearing tearful, upset, and anxious. He presented black eyes predominantly on the left side, suggesting recent injury. He was guarded, tense, basically cooperative. He was defensive and nonspontaneous in his behavior and verbal communication. At times he acted in an oppositional manner, being rather challenging. His speech was clear, expressed in a fast manner. Thought process was coherent with circumstantial features. Mood included labile affects. The patient released significant amount of anger and frustrated feelings while

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CLERK OF SUPERIOR COURT
LENOIR COUNTY
BY

NORTH CAROL..A DIVISION .. MENTAL HEALTH/DEVELOPMENTAL DISABILITIES/ SUBSTANCE ABUSE SERVICES

GRAY, WILLIAM ROBERT
39-86-79

Dorothea Dix Hospital
Raleigh, North Carolina

DISCHARGE SUMMARY - Page 2

FORENSIC PSYCHIATRIC HISTORY & EVALUATION LEGAL ASSESSMENT/DISCHARGE SUMMARY AND AFTERCARE PLAN

describing his wife's past behavior. No suicidal feelings were reported.

There was no evidence observed of hallucinations or delusions. Concentration was fair. Orientation and memory functions were normal. The patient claimed no memory problems. The patient presented average or above average intellectual functioning as observed during interview. Judgment and insight were both poor. Initial mental status as described supported a diagnostic impression that the patient presented an adjustment reaction with mixed disturbance of emotions and conduct in relation to current ongoing stress. The patient was able to report at the time of admission that the incident in question occurred about one week prior to his hospitalization. He said he was arrested shortly after the incident. He reported that he was at home at the time. He denied being responsible for the charges. He gave a history of longstanding conflict with his wife. She had left him. He had won the custody of the children who were living with him and were at home at the time of the alleged incident. The patient reported that he is a practicing dentist and that he was practicing until the time of his arrest. He denied any past psychiatric treatment and denied any problems with substance abuse. The patient was aware that he had been accused of the murder of his wife and that the incident in question had occurred in the area of his home.

PHYSICAL EXAMINATION: Completed at the time of admission was reported within normal limits. Neurologic examination was normal. Review of systems was negative. The patient provided no specific past medical history. The patient presented ecchymosis on both upper eyelids worse on left. Examination was otherwise noncontributory. Vital signs were within normal limits.

LABORATORY TEST: Routine laboratory test procedures and x-rays were not completed due to the patient's refusal to participate in these procedures.

PSYCHOLOGICAL TESTING: The following test were administered: Incomplete Sentence Blank, MMPI, Millon Clinical Multiaxial Inventory (MCMI), Rorschach Inkblot Test

Referral: William Gray is a 44 year old, white male referred for a personality assessment as a component of the forensic evaluation. He was apparently employed as a dentist at the time of his arrest and has no history of mental health treatment.

Behavioral Observations: Mr. Gray presented as a tall, thin, slightly disheveled individual. He wore eyeglasses and had a bruise

NORTH CAROL...A DIVISION ... MENTAL HEALTH/DEVELOPMENTAL DISABILITIES/ SUBSTANCE ABUSE SERVICES

GRAY, WILLIAM
39-86-79

Dorothea Dix Hospital
Raleigh, North Carolina

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FORENSIC PSYCHIATRIC HISTORY & EVALUATION LEGAL ASSESSMENT/DISCHARGE SUMMARY AND AFTERCARE PLAN

below one eye. He seemed to be quite tense and angry with labile affect. He was challenging with regard to this examiner's credential and the relevance of psychological testing. He was articulate with no evidence of loose associations. He did present some suspsicious thinking: for example, he stated that his wife had tampered with the breaks on his car in an effort to involve him in an accident.

Test Results and Interpretations: The test data are sparse due to Mr. Gray's guarded approach to the assessment. For example, on the Rorschach, a projective personality test, his responses were brief defensive, and punctuated by negativistic statements about the nature of the evaluation and test materials. He did not give enough responses to warrant a valid interpretation of the profile. He did, however, complete two objective personality questionnaires.

On the MCMI and MMPI, Mr. Gray endorsed items w hich suggest a tendency to mistrust the motives of other people. People with similar profiles tend to have an exaggerated sensitivity and are often angry and resentful regarding how other people treat them, although they may often provoke negative reactions from others. They may view benign events as a persecution. According to the profile, Mr. Gray may have an inflated sense of his abilities and self-worth with a tendency to present an arrogant posture. Due to a possibly excessive amount of self-involvement, the patient may display a lack of empathy for the concerns of others, often tothe point of exploitation for personal gain. According to the objective questionnaires, Mr. Gray is perhaps defiant with regard to social expectations and authority.

Summary: According to available data, William Gray is a 44 year old white male of above-average intelligence with a tendency to be overly egocentric and defiant, perhaps with a great deal of anger and resentment.

PAST HISTORY: Mr. Gray is a 44 year old, white male patient who was admitted on court order from Lenoir County for pretrial evaluation. The patient has been charged with murder in relation to an incident that reportedly occurred on November 25, 1992. He is accused to have shot his wife. Mr. Gray reports a long history of marital difficulties with his wife and has volunteered information describing the wife to have been abusive to the children and disruptive to the family life. The patient has expressed his concerns for the well-fare of the children and reported that the wife left the home and that he obtained custody of the children through court proceedings. He reports several incidents in which he suspected his wife's adversary actions describing

NORTH CAROLINA DIVISION OF MENTAL HEALTH/DEVELOPMENTAL DISABILITIES/ SUBSTANCE ABUSE SERVICES

GRAY, WILLIAM ROBERT
39-86-79

Dorothea Dix Hospital
Raleigh, North Carolina

DISCHARGE SUMMARY - Page 4

FORENSIC PSYCHIATRIC HISTORY & EVALUATION LEGAL ASSESSMENT/DISCHARGE SUMMARY AND AFTERCARE PLAN

incidents in which he suspected she had damaged brake lines, claiming that she intended for them to have an accident. He also reported being suspicious that he was being photographed in a public place by strangers and refers to his suspicions that the wife was particularly concerned for him to buy life insurance, placing the children as beneficiaries. Mr. Gray did not elaborate in any particular persecutory ideation beyond suspicious statements already mentioned. He described his wife to have become violent with the children and explained his own actions to be inspired in his attempt to protect his children who had become afraid of their mother and did not want to go out with her. Mr. Gray described that he is trained as a dentist and that he practiced privately in Kinston. He reports that his wife was an insurance agent that had a State Farm agency in the area. Mr. Gray reported that the children are presently under the care of some close friends Mr. and Mrs. Hollowell. Mr. Gray denies any past mental health treatment and focussed all present difficulties in his life to have beer related to the actions of his wife. He has denied responsibility in regards to the alleged murder. He has admitted that he was at home at the time and that he was taking a shower before police arrived.

This patient was admitted on court order responding to motion by defendant's attorney. Commitment papers indicated, by the attorney that the patient appeared in a state of shock and was unable to understand the gravity of the situation. Information obtained following contact with the patient's attorney described that the attorney saw the client the night he was charged and that he looked to be in a daze. He reported that the patient has claimed that he did not do it and that he could not get much information from him. The attorney described that the patient has practiced as a dentist in Kinston and that the attorney had known him for 10 years and has represented him in the past on domestic problems with his wife. He described the client to have always been a low profile person in town. The wife had been reported in the past to have broken a stick on the child's back and to have moved out for a period of time and how the patient was awarded custody of the children. The attorney expressed the concern that the patient did not appear to grasp the gravity of the present situation against him.

Information obtained from the arresting officer described the patient was arrested after he was asked to go in for questioning. He did not appear to be intoxicated at the time. He denied responsibility regarding the incident. He was coherent and was questioned in the presence of his attorney. The victim reportedly picked up the kids from the house and they all went out to eat. She reportedly took her children back to the home. Upon returning the kids to the home she was allegedly assaulted and shot in the left temple. Neighbors were reported to have seen Mr. Gray running from the crime location. The weapon had not been recovered and officer reported

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that it is felt to be a small caliber handgun. Officer was aware of previous incidents within the family and one incident when the victim had taken out assault warrants against the patient. At the time of the shooting incident she was reportedly separated but still legally married. The family has two children, a girl age 8, and a boy that is 11. Officer reported that they did not think the children saw the incident in question. The police were called by neighbors after they heard the shot. The date of the offense is 11-25-92. The defendant was arrested after midnight on 11-26-92. He is believed to have run into the woods in the back of the house after the shooting incident and it is also believed that he must have hit his eyes in the woods. He was observed to present black eyes that were not noticed until 11-30-92. He was also described to have had scratches on the face and neck supposedly related to his running through the woods. The victim was described to have bruises on the face and arms indicating the probability that some sort of physical confrontation occurred prior to the actual shooting.

Report obtained from the Lenoir County Jail described the defendant was admitted on 11-26-92. He was reported to be very cooperative, quiet, staying to himself, and appearing at times to be depressed. The jail was not aware of any findings of a black eye. The patient received no medications while he was in jail.

We contacted Mr. Donald Hollowell, a friend of the patient. Informant reported that they are at present caring for the children. They reportedly miss their father a great deal. The informant reported that he has known Mr. and Mrs. Gray since 1966 and that they learned around March of this year that they had marital problems. Prior to that date they had observed occasional disagreement between the two of them and they described observing the patient's wife at time to appear elsewhere "sort of out of it". They described Mr. Gray to have always been a focussed person. They reported that he grew up in town and was well known in the community. Informant reported that he has never observed Mr. Gray had any problem drinking or smoking. They described complaints by Ms. Gray about the amount of time Mr. Gray spent with the children. She was described to spend a great deal of time away from home. Informant reported that in April, 1992 they officially separated and learned that she had moved away. She later on began visiting in order to get personal things out of the house. They reported that they begged her to come back. Informant reported to have never observed the victim to have physically abused the patient nor the children but were told about it. They did not see the family during the day of the incident in question. They reported that about one week prior to the incident the patient shared with them concerns that his wife had made

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several demands on him to end the marriage. These involved her expectation to receive cash and property more than concerns regarding the custody of the children. They described the defendant to appear prepared to sell everything he owned to meet her demands. He was described to be concerned about getting an attorney and he looked to be very stressed out and under a great deal of pressure. Informant reported their knowledge that the court granted visitation and that the court was going to hold Mr. Gray in contempt if he refused to allow them to visit with her. Mr. Hollowell also volunteered information that the children didn't want to visit with the mother and would cry when they were made to do so.

HOSPITAL COURSE: Mr. Gray was admitted with evidence of acute anxiety, dysphoria, a tendency to become tearful and angry, showing poor tolerance of the court ordered evaluation, refusing to cooperate in many procedures, claiming they were irrelevant to his situation. He appeared defensive, hurt, and demonstrated limited tolerance of ordered procedures adopting a defensive attitude and at times challenging and oppositional behavior. During follow up sessions this patient became more comfortable and less oppositional and he was able to participate in a more relaxed conversation regarding the nature of the evaluation and the issues in questions. He has been polite and appropriate in his interactions with me. He has maintained his decision not to participate in x-rays or routine laboratory testing emphasizing that the is in perfect health. Mr. Gray has become acutely anxious and tearful in his efforts to account for his life situation, showing particular concerns about his children and overwhelming feelings of helplessness being unable to be with them. He has repeatedly denied being responsible for this reported murder. He has volunteered abundant information regarding his wife's conduct, expressing intense emotions of anger and indignation for the damage he perceives he has received as a consequence of her actions. Mr. Gray was referred for psychological testing to further assess diagnostically and review personality features. He was also resistant and offered limited cooperation with testing procedures. He was partcularly critical of the testing showing his irritability and poor tolerance of frustation in accepting being subjected to this type of evaluation. Mr. Gray presented himself at times in a rather arrogant position of superiority and challenged our actions in a rather verbally aggressive manner. This involved no overt agitation nor any elements of violence nor abusive conduct. Mr. Gray remained particularly withdrawn during his stay on the ward and he participated very little in activities with the other patients. He was initially quite resistant to accept this hospitalization. He later on adjusted appropriately, remaining frequently in his room. He did not create any disruption on the ward and was respectful and cooperative with staff. During follow up interviews this patient was able

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to process more adequately the issues and the discussion and to relate to us in a less adversary manner reducing the amount of mistrust and defensiveness although he maintained a very guarded attitude in regards to any discussion of the incident related to pending charges. Interviews have indicated no confusion regarding the charges against him nor any impairment in his understanding of court proceedings. Initial suspicious guarded response became significantly improved through his stay and he was more casual and engaging during final interviews maintaining appropriate guarded attitude consistent with the seriousness of current charges. During this hospitalization this patient has received no active psychotropic medication, routine laboratory hospital procedures were cancelled following his repeated refusal to participate.

ANALYSIS AND OPINIONS: Mr. Gray was admitted following court order from Lenoir County. He is accused in relation to the death of his wife who was shot in the area around their home on November 25, 1992. Mr. Gray was described to have appeared to be in a daze and unable to comprehend the seriousness of his situation as observed by his attorney during the period following his arrest. We have observed this patient to have presented evidence of intense emotional response to this situation.The patient has adjusted adequately to this hospitalization and initial suspicious guarded attituded has resolved significantly after several interviews. Our present findings involving behavioral observations mental status examinationand psychological testing supported diagnostic opinion that this patient presents an adjustment disorder with mixed disturbance of emotions and conduct. Available history obtained from different sources indicate that this patient had gone through a serious marital crisis during the month preceding the alleged incident and that the patient had gained custody of the children and that his wife had visiting arrangements. The incident in question reportedly occurred following one opportunity when the victim took the children out and returned them home.

Our present clinical findings including psychological test data indicate features in this patient's personality involving predominant narcissistic traits with some features of paranoid nature. These personality traits are presently observed under a situation of extreme stress and available findings cannot lead to a definite conclusion regarding the intensity of this patient's personality features nor to support full criteria for a diagnosis of a personality disorder. We are aware that we are observing this patient under an extreme situation that may exaggerate personality traits to a level that may appear pathological. Our present findings include no evident psychosis nor any impairment in this patient's ability to understand his situation and surroundings. Although medical evaluation was incomplete, this patient has presented no findings to suggest evidence of ongoing medical illness.

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This patient's present condition does not impair his ability to understand the nature and seriousness of pending charges nor his ability to understand the nature and object of court proceedings. He is capable to understand his position in front of the law and he is capable to assist his attorney in a rational and reasonable manner in the preparation of his defense. It is my opinion that this patient's initial emotional response has improved significantly during the last several weeks and that his present condition does not impair his ability to assist in his defense. It is my opinion that this patient is at present capable to stand trial.

Available information describing this patient's condition around the time of the incident in question indicate that he was under ongoing stress related to his family and marital situation. Observations reported by friends describe evidence of preoccupation and distress and no features to indicate confusion nor any serious impairment in this patient's ability to function. Based on available information, it is my opinion that this patient's condition at the time in question did not impair his basic understanding of the nature and quality of his actions nor his ability to recognize right from wrong. The magnitude of ongoing stressors may have contributed to regression in behavior and reductions in impulse control and control of emotions.

PRINCIPAL AND PRIMARY PSYCHIATRIC DIAGNOSIS:

Axis I. Adjustment disorder with mixed disturbance of emotions and conduct 309.40

ADDITIONAL PSYCHIATRIC DIAGNOSIS:

Axis I. None
Axis II. None
Axis III. None

MEDICATIONS: This patient is discharged under no prescriptions and no immediate treatment recommendations.

RECOMMENDATIONS: We are discharging this patient to the custody of the sheriff with recommendation that this patient is at present capable to stand trial.

Available information and report obtained from the client himself suggest that this patient is undergoing significant amount of distress and could benefit significantly from psychiatric counselling. Potential increase in levels of stress related to ongoing court process may induce further regression in behavior and represent potential for further development of depressive symptoms that may require active treatment with medications. I

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recommend referral to a psychiatrist for this reason. Treatment recommendations are presented independently from the potential outcome this pending case. Our current sources of information describing this patient's condition prior to the incident in question are quite limited. If other sources of information become available to describe this patient's functioning and condition prior to that time, I would be glad to review the information to expand my opinions if possible in regards to this patient's condition at the time of the alleged offense.

Patricio P. Lara, M.D.
Forensic Psychiatrist
Pretrial Evaluation Center

PPL/aws

01-06-93
cc: Defense Attorney, Presiding Judge, Patient

WORTHINGTON & CLEAVENGER

ATTORNEYS AT LAW
P. O. BOX 758

KINSTON, NORTH CAROLINA 28501-0758

BOB D. WORTHINGTON
PAUL T. CLEAVENGER

(919) 523-2114

July 9, 1993

Billy Smith, Sheriff
Lenoir Co. Sheriff Dept.
Lenoir County Courthouse
Kinston, N.C. 28501

Re: William Robert Gray, Jr.

Dear Billy:

Per our previous conversation, I hereby request that you continue to keep William Robert Gray, Jr. in the Juvenile Detention Cell rather than in the general lockup. Due to his physical and mental condition at this time I believe that it will be in his best interest.

Thank you for your consideration and co-operation in this matter.

Sincerely yours,

Bob D. Worthington

Bob D. Worthington

I concur and consent

William Robert Gray, Jr.

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NORTH CAROLINA — IN THE GENERAL COURT OF JUSTICE

LENOIR COUNTY — SUPERIOR COURT DIVISION

STATE OF NORTH CAROLINA, — FILE NO. 92 CRS 11650

Plaintiff

v. — AFFIDAVIT

WILLIAM ROBERT GRAY, JR.,

Defendant

I, James E. Bellard, M.D., first being duly sworn say that:

I am a citizen and resident of Wake County, North Carolina.

I am currently a licensed health care provider in the State of North Carolina and have been so since October 1984.

I received my bachelor's degree from the University of Virginia in 1977. I received my medical degree from Emory University in Atlanta, GA in 1981. I completed my residency in General Psychiatry at Chapel Hill, NC in 1985. I carry Board Certifications in both General and Forensic Psychiatry.

I have testified in state and federal court on numerous occasions in the past as an expert in forensic psychiatry.

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I have interviewed Dr. William Robert Gray, Jr. on January 6, 1999 and January 13, 1999 for a total of four hours. Both interviews were conducted at Central Prison in Raleigh, NC.

I have reviewed documentation in this case, thus far including the medical records of marital therapist, Marilyn Huber; Dorothea Dix Hospital discharge summary dated December 1, 1992 signed by Dr. Patricio Lara; and the North Carolina Supreme Court holdings in State vs. Gray, dated October 3, 1997.

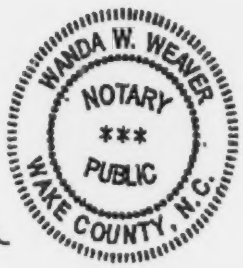
Based on the above interviews and evaluation of documents in this case, it is my opinion that the patient, Dr. William Robert Gray, Jr., did at the time of the offense for which he was convicted, and does at the current time suffer from a psychiatric illness, specifically, Paranoid Personality Disorder (DSM Code 301.0). Furthermore, it is my opinion that he may suffer from other psychiatric disorders.

Based again on my evaluation of the patient and on the review of documents listed, it is my opinion that use of psychiatric testimony in the patient's trial for first degree murder of his wife could have offered information useful to a jury as to the defendant's mental state on November 25, 1992 and whether his ability to calmly function and plan was impaired.

Again, based on my interviews with Dr. Gray, and based on the review of the documents noted above, it is further my opinion that psychiatric testimony in the mitigation phase of the patient's trial would have supported inclusion of at least two statutorily defined mitigating factors, specifically that "the capital felony was committed while the defendant was under the influence of mental and emotional disturbance," and that "the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was impaired."

County of Wake

State of North Carolina



James E. Bellard, M.D.

SWORN to and subscribed before me
this 25 day of February, 1999.

Wanda W. Weaver
Notary Public

My Commission Expires:
January 18, 2004

STIPULATE, AND WE WILL STIPULATE TO THE MATTERS SET FORTH IN THE AFFIDAVIT OF DAVID BELZER WHICH WAS ATTACHED TO THE MOTION FOR APPROPRIATE RELIEF AS EXHIBIT "S". JUST SO WE COULD HAVE THAT ON THE RECORD; IS THAT YOUR UNDERSTANDING, MR. ARBOGAST?

MR. ARBOGAST: THE STATE AGREES, YOUR HONOR. THE STATE STIPULATES TO THE MATTERS CONTAINED IN THE AFFIDAVIT OF MR. BELZER. IF HE WOULD HAVE TESTIFIED, HE WOULD HAVE TESTIFIED IN ACCORDANCE WITH THE MATTERS ASSERTED IN HIS AFFIDAVIT.

THE COURT: ALL RIGHT.

MR. HAMMER: YOUR HONOR, WE WILL CALL AT THIS POINT IN TIME DR. JAMES BELARD, JIM BELARD.

JAMES E. BELARD, M.D., FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS ON DIRECT EXAMINATION BY MR. HAMMER:

Q. WOULD YOU PLEASE STATE YOUR NAME?

A. MY NAME IS JAMES E. BELARD, M.D.

Q. AND WHERE ARE YOU EMPLOYED, MR. BELARD?

A. I'M SELF-EMPLOYED IN PRIVATE PRACTICE IN PSYCHIATRY IN RALEIGH.

Q. WOULD YOU TELL THE COURT YOUR EDUCATIONAL BACKGROUND SINCE HIGH SCHOOL?

A. MY UNDERGRADUATE DEGREE IS FROM THE UNIVERSITY OF VIRGINIA. I FINISHED THERE IN 1977. I WENT ON TO EMORY UNIVERSITY WHERE I RECEIVED MY M.D. IN 1981. I DID

MY RESIDENCY IN PSYCHIATRY AT CHAPEL HILL, FINISHING THERE IN 1985.

Q. AND WHERE HAVE YOU BEEN EMPLOYED SINCE 1985?

A. IN 1985 I BEGAN EMPLOYMENT WITH THE PUBLIC HEALTH SERVICE. I WAS STATIONED IN LOUISBURG AND WARRENTON, NORTH CAROLINA, WHERE I WAS WORKING IN A HEALTH MANPOWER SHORTAGE AREA TO PAY BACK A PUBLIC HEALTH SERVICE SCHOLARSHIP. I STAYED THERE UNTIL 1988 AND WAS THE CLINICAL DIRECTOR OF TWO OF THE FOUR MENTAL HEALTH CENTERS IN THOSE FOUR COUNTIES, AND ALSO DEVELOPED AN INPATIENT UNIT AT THE FRANKLIN MEMORIAL HOSPITAL IN LOUISBURG.

MY FAMILY AND I THEN MOVED TO CUMBERLAND, MARYLAND, WHERE I WAS THE MEDICAL DIRECTOR OF A STATE HOSPITAL WHICH SERVED WESTERN MARYLAND. I STAYED THERE UNTIL 1991.

WHEN I RETURNED TO NORTH CAROLINA IN 1991, I BEGAN WORKING WITH THE FEDERAL GOVERNMENT AT BUTNER, WHICH IS A PSYCHIATRIC PRISON FOR FEDERAL PRISONERS, WHERE I DID EVALUATIONS OF PRISONERS FOR COMPETENCY TO STAND TRIAL, CRIMINAL RESPONSIBILITY, AND ALSO DID EVALUATIONS AND TREATMENT OF INDIVIDUALS IN NEED OF PSYCHIATRIC TREATMENT IN THE FEDERAL PRISON SYSTEM. I CONTINUED THAT WORK UNTIL APPROXIMATELY 1994.

THERE WAS SOME OVERLAP WHERE I DID BOTH PRIVATE

PRACTICE AND WORKED FOR THE FEDERAL GOVERNMENT. SINCE 1995 I'VE BEEN SOLELY SELF-EMPLOYED WITH RALEIGH PSYCHIATRIC ASSOCIATES.

I CURRENTLY SPEND ABOUT 40 PERCENT OF MY TIME DOING FORENSIC WORK, WHICH IS INVOLVED IN MEDICAL MALPRACTICE CLAIMS AS WELL AS ISSUES BEFORE THE COURT OF CRIMINAL MATTERS. THE REST OF MY TIME IS SPENT DOING HOSPITAL WORK AND DOING OUTPATIENT PSYCHIATRY IN RALEIGH.

Q. HAVE YOU BEEN QUALIFIED AS AN EXPERT WITNESS BEFORE?

A. YES, I HAVE.

Q. WOULD THAT BE IN THE AREA OF PSYCHIATRY?

A. I'VE BEEN QUALIFIED AS AN EXPERT WITNESS IN GENERAL PSYCHIATRY AND IN FORENSIC PSYCHIATRY.

Q. AND HAVE YOU EVER TESTIFIED ON BEHALF OF THE GOVERNMENT, EITHER THE U. S. GOVERNMENT OR THE STATE OF NORTH CAROLINA?

A. YES, I HAVE. YES TO BOTH.

Q. SO THAT WOULD BE IN CRIMINAL MATTERS?

A. YES.

Q. AND HAVE YOU ALSO TESTIFIED ON BEHALF OF DEFENDANTS?

A. YES, I HAVE.

MR. HAMMER: YOUR HONOR, AT THIS TIME I WOULD MOVE THAT DR. BELARD BE QUALIFIED AS AN EXPERT IN

PSYCHIATRY.

THE COURT: ALL RIGHT.

MR. ARBOGAST: NO OBJECTIONS.

THE COURT: LET THE RECORD SO REFLECT.

WITNESS: THANK YOU, YOUR HONOR.

Q. HAVE YOU BEEN RETAINED TO TESTIFY AS AN EXPERT IN THIS CASE?

A. YES, I HAVE.

Q. AND DO YOU KNOW WHETHER COURT FUNDS WERE APPROVED FOR YOUR EMPLOYMENT AS AN EXPERT?

A. YOU FORWARDED A COPY OF A COURT ORDER TO ME STATING THAT COURT FUNDS HAD BEEN APPROVED, YES.

Q. HAVE YOU HAD AN OPPORTUNITY TO EXAMINE DR. BOB GRAY?

A. YES. I SAW MR. GRAY ON TWO OCCASIONS IN JANUARY OF THIS YEAR.

Q. HAVE YOU HAD AN OPPORTUNITY TO READ ANY MENTAL HEALTH RECORDS CONNECTED WITH THIS CASE?

A. I HAD THE OPPORTUNITY TO REVIEW RECORDS FROM DR. MARILYN HUBER, TO REVIEW THE REPORT FROM DR. PATRICIO LARA REGARDING DR. GRAY. I'VE REVIEWED SOME TRANSCRIPTS FROM HIS TRIAL, AND A COPY OF AN AFFIDAVIT FILED BY A PHYSICIAN WHO HAD TREATED HIS WIFE.

Q. BASED ON WHAT YOU'VE REVIEWED AND YOUR INTERVIEWS WITH DR. GRAY, HAVE YOU FORMED AN OPINION

SATISFACTORY TO YOURSELF WITH A DEGREE OF MENTAL CERTAINTY AS TO WHETHER BOB GRAY SUFFERED A CONDITION WHICH IMPAIRED HIS ABILITY TO MAKE AND CARRY OUT PLANS FOR NOVEMBER 25, 1992?

A. YES, I HAVE.

Q. AND WHAT IS THAT OPINION?

A. MY OPINION IS THAT AT THE TIME OF THE CRIME, DR. GRAY SUFFERED FROM A PARANOID PERSONALITY DISORDER THAT IMPAIRED HIS ABILITY TO CALMLY PLAN AT THAT TIME.

Q. AND WHAT IS PARANOID PERSONALITY DISORDER, DOCTOR?

A. THAT WOULD BEST BE ANSWERED BY BEGINNING BY DESCRIBING PERSONALITY DISORDERS IN GENERAL. THEY'RE A CHRONIC PERVASIVE MALADAPTIVE SET OF BEHAVIORS THAT INDIVIDUALS HAVE. CHRONIC MEANING THAT THEY ARE LONG-LASTING, PERVASIVE MEANING THAT THEY AFFECT MORE THAN JUST A SINGLE AREA OF AN INDIVIDUAL'S FUNCTIONING, AND MALADAPTIVE IN THAT THEY DON'T -- THE BEHAVIORS DO NOT SUCCEED IN FURTHERING AN INDIVIDUAL'S HEALTHIER GOALS. SO THAT'S PERSONALITY DISORDERS IN GENERAL.

DR. GRAY, IN MY OPINION, HAS A PARANOID PERSONALITY DISORDER IN THAT HE HAD, AT THAT TIME, AND HAD AS OF MY LAST INTERVIEW WITH HIM, A SERIES OF BELIEFS ABOUT OTHER PEOPLE, THEIR MOTIVATIONS, AND THE PURPOSES OF THEIR ACTIONS AGAINST HIM. HE HAS DIFFICULTY TRUSTING

PEOPLE, IS SUSPICIOUS OF MOTIVES OF OTHER PEOPLE.

Q. HAVE YOU FORMED AN OPINION SATISFACTORY TO YOURSELF TO A DEGREE OF MEDICAL CERTAINTY AS TO WHETHER BOB GRAY ON NOVEMBER 25, 1992, WAS UNDER EMOTIONAL OR MENTAL STRESS?

A. YES, I HAVE.

Q. AND WHAT IS THAT OPINION?

A. WELL, I CERTAINLY BELIEVE HE WAS SUFFERING FROM CONSIDERABLE EMOTIONAL STRESS AT THAT TIME, BOTH FROM THE PARANOID PERSONALITY DISORDER AND IN ALL LIKELIHOOD, FROM AN ADJUSTMENT DISORDER THAT HE WAS SUFFERING AT THE TIME DUE TO THE MARITAL STRESS.

Q. WHAT WAS HE ADJUSTING TO?

A. HE WAS HAVING TERRIBLE PROBLEMS IN HIS MARRIAGE AND IN HIS FAMILY. HE HAD BEEN ACCUSED OF NOT TAKING PROPER CARE OF HIS CHILDREN. HE WAS VERY WORRIED ABOUT THE DISSOLUTION OF HIS FAMILY. HE WAS WORRIED THAT HIS OWN LIFE WAS IN DANGER. HE WAS AFRAID THAT HIS WIFE WAS PLOTTING TO KILL HIM OR HAVE HIM KILLED. HE THOUGHT THAT HE WAS UNDER SURVEILLANCE, AND WAS WORRIED THAT HIS LIFE AT THAT TIME WAS FALLING APART.

Q. AND GIVEN YOUR ASSESSMENT OF PARANOID PERSONALITY DISORDER, DID THESE FACTORS, IN ANY WAY HAVE AN INTERPLAY WITH HIS PERSONALITY DISORDER?

A. YES. BECAUSE IF HE HAD NOT HAD THE PARANOID

PERSONALITY DISORDER, HE WOULD HAVE BEEN MORE LIKELY TO DEAL IN A RATIONAL AND CALM MANNER WITH THE PROBLEMS THAT WERE FACING HIM AND HIS FAMILY.

Q. BASED ON YOUR INTERVIEW OF DR. GRAY AND READING OF VARIOUS REPORTS, HAVE YOU FORMED AN OPINION SATISFACTORY TO YOURSELF TO A DEGREE OF MEDICAL CERTAINTY AS TO WHETHER BOB GRAY COULD APPRECIATE THE CRIMINALITY OF HIS CONDUCT OR CONFORM HIS CONDUCT TO THE REQUIREMENTS OF LAW ON NOVEMBER 25, 1992?

A. YES, ALTHOUGH I HAVE SOME FURTHER QUESTIONS REGARDING THOSE ISSUES.

Q. BUT WHAT IS YOUR OPINION?

A. MY OPINION IS THAT HE COULD CONFORM HIS CONDUCT AT THAT TIME?

Q. HE COULD?

A. YES.

THE COURT: THAT HE WHAT NOW?

A. THAT HE COULD CONFORM HIS CONDUCT AT THAT TIME.

Q. BUT WAS HIS ABILITY TO CONFORM HIS CONDUCT IMPAIRED?

A. HIS ABILITY WAS IMPAIRED.

Q. WAS IT SIGNIFICANTLY IMPAIRED?

A. IT WAS SIGNIFICANTLY IMPAIRED.

Q. YOU FILED AN AFFIDAVIT IN THIS MATTER; IS THAT CORRECT?

A. YES, I DID.

Q. AND IN THAT AFFIDAVIT, I BELIEVE YOU SET FORTH DR. GRAY'S ABILITY TO CALMLY PLAN AND FUNCTION WAS IMPAIRED; IS THAT CORRECT?

A. YES, I DID.

Q. DOES THE ABILITY OF SOMEONE WITH PARANOID PERSONALITY DISORDER -- DO THEIR ABILITIES BECOME MORE IMPAIRED OR BECOME WORSE UNDER STRESS?

A. OF COURSE. YES, THEY DO.

Q. BASED UPON THE PATIENTS THAT YOU HAD, WHERE YOU'VE TREATED IN PRIVATE PRACTICE -- AND YOU DO HAVE A PRIVATE PRACTICE; IS THAT CORRECT?

A. YES, I DO. IT STILL TAKES UP THE MAJORITY OF MY TIME, YES.

Q. HAVE YOU TREATED PATIENTS OR ENCOUNTERED PATIENTS WITH PARANOID PERSONALITY DISORDER?

A. YES, I HAVE.

Q. AND BASED ON A SCALE OF 1 TO 10, HOW BAD WOULD YOU SAY BOB GRAY'S PROBLEM IS?

A. HOW SEVERE, YOU MEAN?

Q. YES.

A. ON A SCALE OF 1 TO 10, WITH 1 BEING VERY MILD AND 10 BEING SEVERE, DR. GRAY'S PARANOID PERSONALITY DISORDER WOULD BE AN 8.

Q. IF YOU HAD BEEN ASKED TO TESTIFY ON BEHALF OF

BOB GRAY OR THE STATE OF NORTH CAROLINA IN 1992, COULD YOU HAVE OFFERED TESTIMONY THAT BOB GRAY HAD BEEN UNDER SIGNIFICANT EMOTIONAL DISTRESS IN 1992?

A. YES, I BELIEVE --

* * *

MR. ARBOGAST: OBJECTION, YOUR HONOR. THAT'S SPECULATIVE. THIS WITNESS NEVER EXAMINED --

THE COURT: SUSTAINED.

* * *

MR. HAMMER: NO FURTHER QUESTIONS AT THIS TIME.

THE COURT: CROSS-EXAMINATION?

CROSS-EXAMINATION OF DR. BELARD BY MR. ARBOGAST:

Q. GOOD MORNING, DR. BELARD.

A. GOOD MORNING.

Q. YOU SAW THE DEFENDANT TWICE IN YOUR AFFIDAVIT; CORRECT?

A. THAT'S CORRECT.

Q. AND THIS WAS ON JANUARY 6 AND JANUARY 13 OF 1999?

A. THAT'S CORRECT.

Q. ABOUT SIX MONTHS AGO.

A. YES, SIR.

Q. AND YOU SAW HIM FOR A TOTAL OF FOUR HOURS.

A. THAT'S CORRECT.

Q. DO YOU KNOW HOW MUCH TIME ON EITHER DATE? DO YOU RECALL IF IT WAS TWO AND TWO, OR --

A. LET ME CHECK MY NOTES, AND I SHOULD BE ABLE TO TELL YOU. WELL, MY NOTES WOULD SAY TWO HOURS AND 15 MINUTES ON THE 6TH, AND APPROXIMATELY TWO HOURS ON THE 13TH. PRETTY CLOSE.

Q. NOW, THE MURDER OF ROSALYN GRAY TOOK PLACE BACK IN NOVEMBER OF 1992; CORRECT?

A. THAT'S MY UNDERSTANDING, YES.

Q. BETTER THAN SIX YEARS BEFORE YOU EXAMINED HIM FOR THE FIRST TIME; CORRECT?

A. THAT'S CORRECT.

Q. DID YOU HAVE ANY CONTACT WHATSOEVER WITH THE DEFENDANT IN THAT SIX YEARS?

A. NO. I HAVE NO KNOWLEDGE OF THE CRIME IN THAT SIX YEARS.

Q. AND TO YOUR KNOWLEDGE, THE DEFENDANT HAS BEEN CONFINED IN CENTRAL PRISON SINCE HIS CONVICTION FOR THAT CRIME; CORRECT?

A. I DIDN'T ASK HIM THAT QUESTION SPECIFICALLY, BUT I DON'T IMAGINE HE'S BEEN ABLE TO GO ELSEWHERE.

Q. YOU SAW HIM AT CENTRAL PRISON, DID YOU NOT?

A. THAT'S CORRECT.

Q. AND YOU WERE ALSO AWARE THAT HE WAS ON DEATH ROW AT CENTRAL PRISON; CORRECT?

A. MOST CERTAINLY.

Q. TO YOUR KNOWLEDGE HAD HE EVER BEEN RELEASED FROM PRISON?

A. NOT TO MY KNOWLEDGE.

Q. OBVIOUSLY, YOU DIDN'T OBSERVE HIM OR EVALUATE HIM ON THE NIGHT OF THE MURDER ANY TIME OR IN ANY REASONABLE PROXIMITY TO THAT, DID YOU?

A. NO, I DID NOT.

Q. WHEN YOU WERE CONTACTED BY THE DEFENSE ON THIS CASE, WHAT INFORMATION -- WHAT DID THEY TELL YOU?

A. THEY TOLD ME THAT THIS WAS A CASE OF POST-CONVICTION RELIEF; THAT THEY HAD CONCERNS ABOUT WHETHER MENTAL HEALTH TESTIMONY SHOULD HAVE BEEN USED AT TRIAL OR AT SENTENCING; THAT THEY WERE CONCERNED THAT THE DEFENDANT STILL HAD MENTAL OR EMOTIONAL PROBLEMS; AND THAT THEY WOULD APPRECIATE ME EVALUATING HIM WITH THOSE QUESTIONS IN MIND.

Q. SO AT THE TIME YOU WENT TO EVALUATE HIM, THE DEFENSE HAD ALREADY KEYED YOU IN TO THE BELIEF THAT THERE WERE MENTAL HEALTH PROBLEMS; CORRECT?

A. WELL, YES. THAT IS USUALLY THE CASE IN A FORENSIC EVALUATION. I ASK WHAT PURPOSE THE FORENSIC EVALUATION WILL BE TO FULFILL. DEFENSE COUNSEL USUALLY TELLS ME WHAT THEY'RE LOOKING FOR, RATHER THAN IT BEING A FISHING EXPEDITION.

Q. THAT'S JUST IT. THEY TOLD YOU WHAT YOU WERE LOOKING FOR, DIDN'T THEY?

A. THEY TOLD ME WHAT I JUST TOLD YOU, YES. IT WOULD BE HIGHLY UNUSUAL FOR DEFENSE COUNSEL NOT TO.

Q. HAD YOU BEEN TOLD ANY INFORMATION ABOUT THE CRIME ITSELF?

A. I RECEIVED DR. LARA'S REPORT, AND I CANNOT TELL YOU FROM MEMORY RIGHT NOW WHETHER I -- YES. I DID RECEIVE IT BEFORE I SAW DR. GRAY.

Q. DR. LARA, PATRICIO LARA'S REPORT?

A. DR. LARA'S REPORT FROM DOROTHEA DIX. AND MR. HAMMER DID GIVE ME A BRIEF SYNOPSIS OF WHAT DR. GRAY WAS ACCUSED OF DOING.

Q. DR. LARA DID NOT FIND A PARANOID PERSONALITY DISORDER, DID HE?

A. HE DID NOT FIND A PARANOID PERSONALITY DISORDER. HE DID FIND SOME ELEMENTS OF SUSPICIOUSNESS AND PARANOIA AND IF I MAY, IN HIS DISCUSSION OF THE CASE, CLEARLY CONSIDERED A PERSONALITY DISORDER, BUT ONLY DIAGNOSED AN ADJUSTMENT DISORDER.

Q. AND THAT HE WAS ONGOING STRESS, SUBJECT TO ONGOING STRESS RELATED TO HIS CURRENT SITUATION. HE ALSO STATED THAT, DIDN'T HE?

A. THAT WAS DR. LARA'S IMPRESSION, YES.

Q. YOU'RE FAMILIAR WITH THE TERM "SITUATIONAL

STRESSORS", ARE YOU NOT?

A. YES, I AM.

Q. THAT WOULD BE STRESS JUST FROM THE CIRCUMSTANCES HE FOUND HIMSELF IN?

A. YES.

Q. HIS WIFE WAS SHOT, HE'S IN PRISON. OBVIOUSLY, HE WAS STRESSED. HIS LIFE IS DRASTICALLY CHANGING; CORRECT?

A. EXTREME STRESS, YES.

Q. THAT COULD COME JUST FROM THE SITUATION HE FOUND HIMSELF IN AND NOT FROM ANYTHING ELSE, COULDN'T IT?

A. THAT POSSIBILITY CERTAINLY EXISTS. THAT'S NOT HOW I FORMULATED THE CASE.

Q. DID YOU DO A PHYSICAL EXAM ON HIM?

A. NO, I DID NOT.

Q. DID YOU DO ANY PSYCHOLOGICAL TESTING?

A. NO MORE THAN A CURSORY EXAMINATION OF HIS ABILITIES IN THE AREAS OF MEMORY, ORIENTATION, JUDGMENT, INSIGHT, AND ABSTRACTION, BUT NO FORMAL PSYCHOLOGICAL TEST WAS DONE. I DISCUSSED THAT AT SOME LENGTH WITH DR. GRAY, AND HE WAS VERY MUCH AGAINST PSYCHOLOGICAL TESTING BEING PERFORMED.

Q. WOULD THAT HAVE BEEN HELPFUL?

A. IT WASN'T CRITICAL TO ME MAKING A DIAGNOSIS. I WOULD STATE IF THERE WERE A TRIAL IN THIS CASE, A RE-

TRIAL IN THIS CASE, THAT I WOULD WANT PSYCHOLOGICAL TESTING.

Q. THAT WOULD HELP YOU NARROW AND FOCUS AND CONFIRM YOUR OPINIONS, WOULDN'T IT?

A. WELL, WE ALWAYS WANT MORE INFORMATION.

Q. YOUR EVALUATION DEPENDS UPON A GREAT DEAL OF WHAT THE DEFENDANT TELLS YOU IN YOUR EVALUATION, DOESN'T IT?

A. YES. BUT NOT SOLELY UPON THAT.

Q. IN OTHER WORDS, HE CAN TELL YOU WHAT HE WANTS YOU TO HEAR AND KEEP OUT WHAT HE DOESN'T WANT YOU TO HEAR; CORRECT?

A. WELL, I THINK I WOULD BE A LOUSY OR POORLY TRAINED FORENSIC PSYCHIATRIST IF I DIDN'T ACKNOWLEDGE THE POSSIBILITY OF MALINGERING IN ANY DEFENDANT. HOWEVER, THERE'S NO EVIDENCE OF MALINGERING IN THIS CASE. IN FACT, DR. GRAY FELT STRONGLY, AND I THINK VENTURED AGGRESSIVELY TO PROVE TO ME THAT THERE WAS NO MENTAL ILLNESS PRESENT.

Q. WHAT DID YOU DO BETWEEN THE TWO VISITS? DID YOU SEEK ANY FURTHER DATA?

A. I TALKED TO MR. HAMMER AGAIN ABOUT THE FIRST VISIT AND REVIEWED THE DATA THAT I DID HAVE. I BELIEVE DR. HUBER'S NOTES BECAME AVAILABLE TO ME AS WELL.

Q. DID YOU EVER READ ANY TRIAL TRANSCRIPT OF THE

TESTIMONY OF THE WITNESSES?

A. YES, I DID.

Q. WHO?

A. DR. GRIDLEY AND THE DEFENDANT HIMSELF.

Q. DID YOU READ THE TESTIMONY, FOR EXAMPLE, OF THE PEOPLE WHO HAD CONTACTED AND OBSERVED HIM ON THE NIGHT OF THE OFFENSE?

A. I DID NOT.

Q. WHAT ABOUT HIS -- THE WOMAN WHO WORKED, FOR LACK OF A BETTER TERM, AS A DENTAL ASSISTANT IN HIS OFFICE, WORKED WITH HIM?

A. IS THAT MS. HILL?

Q. I BELIEVE IT'S MS. HILL.

A. I HAVE TRIED OVER THE LAST TEN DAYS TO GET IN TOUCH WITH MS. HILL BY PHONE, BUT HAVE BEEN UNABLE TO. BUT NO, SIR, NO. I HAVE NOT TALKED WITH HER.

Q. DID YOU TALK TO OR READ THE TESTIMONY OF I BELIEVE IT WAS THE DEFENDANT'S COUSIN OR RELATIVE THAT TESTIFIED?

A. NO, I DID NOT.

Q. WHAT ABOUT THE TESTIMONY OF A FRIEND FROM DENTAL SCHOOL A FEW YEARS BEFORE? DID YOU READ THAT?

A. NO.

Q. PARANOID PERSONALITY DISORDER, DOCTOR, AND YOU'VE GOT THE DSM4 UP THERE?

A. YES, I DO.

Q. IT REQUIRES AN EVALUATION OF THE DEFENDANT'S LONG TERM PATTERNS AND FUNCTIONS; CORRECT?

A. THAT'S TRUE.

Q. WHEN YOU EVALUATED THIS DEFENDANT, HE WAS 43 OR 44 YEARS OLD?

A. 44, I THINK.

Q. AND PARANOID PERSONALITY DISORDERS HAVE TO MANIFEST THEMSELVES BY LATE ADOLESCENCE, EARLY CHILDHOOD, DON'T THEY?

A. LATE ADOLESCENCE OR EARLY ADULTHOOD.

Q. ADULTHOOD, I'M SORRY. EARLY ADULTHOOD.

A. THAT'S RIGHT.

Q. WOULD IT NOT HAVE BEEN HELPFUL TO GO BACK AND TALK TO SOME OF THESE PEOPLE WHO KNEW HIM IN HIS EARLY ADULTHOOD, LIKE FROM MEDICAL SCHOOL, RELATIVES HE GREW UP WITH HIM?

A. AS I SAID, ALL INFORMATION WOULD BE HELPFUL.

Q. AND IN FACT, WHEN YOU DIAGNOSED PARANOID PERSONALITY DISORDER, DSM4 SPECIFICALLY CAUTIONS THAT YOU HAVE TO ELIMINATE THE POSSIBILITY OF SITUATIONAL STRESSORS CAUSING THE SYMPTOMS; DOESN'T IT?

A. YES, IT DOES.

Q. WHAT DID YOU DO TO ELIMINATE THE SITUATIONAL STRESSORS?

A. WELL, TO ELIMINATE THE SITUATIONAL STRESSORS BY THE FACT THAT HE BELIEVES THAT HE HAD HAD FROM PRIOR TO THE KILLING CONTINUED TO THIS DAY, NOT THIS DAY, THE DAY I LAST EVALUATED HIM, WHICH IS A SPAN OF OVER SIX YEARS.

Q. AND HE'S BEEN IN PRISON THAT WHOLE TIME, HAS HE NOT?

A. YES, HE HAS.

Q. AND THAT WOULD BE STRESSFUL TO BE IN PRISON FOR SIX YEARS, WOULDN'T IT?

A. IT IS A STRESSOR. IT'S CERTAINLY NOT THE INITIAL STRESSOR THAT HE WAS UNDER.

Q. WELL, IN YOUR PRIVATE PRACTICE, DO YOU DO ANY WORK FOR PEOPLE GOING THROUGH DIVORCES?

A. YES.

Q. NOBODY WOULD ARGUE THAT THAT WAS A STRESSFUL SITUATION; ISN'T IT?

A. I'M SURE WE'D ALL AGREE ON THAT.

Q. THE FACT THAT ONE SPOUSE LEFT WOULD STRESS, WOULD CAUSE YOU STRESS, WOULDN'T IT?

A. WELL, CERTAINLY. I MEAN STRESS IS SUCH A VAGUE TERM, THAT VIRTUALLY ANYTHING THAT YOU SUGGEST TO ME THAT IS DIFFICULT FOR A PERSON TO TOLERATE CONSTITUTES STRESS. I AGREE.

Q. BUT THE QUESTION IS HE'S STRESSED; SO WHAT?

A. HE'S STRESSED; SO WHAT?

Q. CORRECT.
A. I'M NOT SURE I KNOW HOW TO RESPOND TO THAT QUESTION. I'LL DO MY BEST. WHAT IS THE QUESTION?
Q. WHAT DOES IT HAVE TO DO WITH HIS LACK OF RESPONSIBILITY FOR SHOOTING HIS WIFE IN THE HEAD?
A. WHAT DOES STRESS HAVE TO DO WITH HIS LACK OF RESPONSIBILITY FOR SHOOTING HIS WIFE IN THE HEAD?
Q. CORRECT.

* * *

MR. BRYSON OBJECTION. I DON'T THINK HE TESTIFIED TO THAT.

MR. HAMMER: OBJECTION. I DON'T THINK HE TESTIFIED THAT IT WAS A LACK OF RESPONSIBILITY. HE'S ASSUMING A FACT IN TESTIMONY THAT'S NOT IN EVIDENCE.

THE COURT: SUSTAINED.

* * *

Q. DR. BELARD, I BELIEVE YOUR TESTIMONY WAS THAT HIS PARANOID PERSONALITY DISORDER LIMITED OR HINDERED HIS ABILITY TO PLAN AND CARRY OUT THINGS.
A. THAT IS MY TESTIMONY, YES.

THE COURT: KEEP YOUR VOICE UP, PLEASE.

A. I'M SORRY?

THE COURT: KEEP YOUR VOICE UP, PLEASE.

A. YES, SIR.
Q. BUT YOU DIDN'T READ THE TESTIMONY AT THE TRIAL

OF WHAT TOOK PLACE, DID YOU?

A. AS I SAID, I READ DR. GRIDLEY'S TESTIMONY AND DR. GRAY'S TESTIMONY.

Q. WOULD FOLLOWING HIS WIFE, WEARING WIGS, THAT WOULD INDICATE AN ABILITY TO PLAN SOMETHING, WOULDN'T IT?

A. FOLLOWING HIS WIFE, WEARING WIGS?

Q. WEARING A WIG IN AN ATTEMPT TO CONCEAL HIS IDENTITY?

A. YOUR QUESTION, AGAIN, IS WHETHER THAT --

Q. THAT WOULD INDICATE AN ABILITY TO THINK LOGICALLY AND PLAN, PLAN THIS OUT? TO BUY A WIG?

A. IT INDICATES AN ABILITY TO PLAN, CERTAINLY. MY TESTIMONY IS HIS ABILITY TO PLAN WAS IMPAIRED.

Q. WAS JUST IMPAIRED?

A. IT WAS IMPAIRED.

Q. HOW MUCH IT WAS IMPAIRED, WOULDN'T IT HELP YOU TO KNOW THE THINGS THAT HE DID, THE SURROUNDING CIRCUMSTANCES?

A. CERTAINLY.

Q. THE FACT THAT THE DEFENDANT USED DIFFERENT VEHICLES, THAT SHOWS AN ABILITY TO PLAN AND TO THINK, DOESN'T IT?

* * *

MR. HAMMER: OBJECTION. I'M NOT SURE WHETHER THAT WAS IN EVIDENCE AT TRIAL.

MR. ARBOGAST: IT CAME FROM EVIDENCE AT TRIAL, YOUR HONOR. THE DEFENDANT BORROWED HIS DENTAL SECRETARY'S -- I THINK IT WAS HER FATHER'S TRUCK AT ONE TIME AND A MR. DON HOLLOWELL'S TRUCK ON ANOTHER OCCASION.

MR. HAMMER: BUT I DON'T THINK THAT WAS IN ANY WAY RELATED TO THE INCIDENT.

THE COURT: OVERRULED.

* * *

A. I SHOULD ANSWER THE QUESTION, YOUR HONOR?

Q. AGAIN, WOULDN'T THAT SHOW SOME ABILITY TO PLAN?

A. IT WOULD SHOW SOME ABILITY TO PLAN.

Q. AND AFTER THE SHOOTING, RUNNING BEHIND THE HOUSE AND CONCEALING YOUR CLOTHES, THAT WOULD SHOW SOME ABILITY TO PLAN AND TO THINK, WOULDN'T IT?

A. SOME.

Q. AND HIDING THE WEAPON IN THE MUD WOULD SHOW AN ABILITY TO PLAN AND THINK, WOULDN'T IT?

A. IT WOULD SHOW SOME ABILITY TO PLAN.

Q. AND THEN RUNNING IN THE HOUSE AND JUMPING IN THE SHOWER TO WASH OFF OR IN THE BATHTUB TO WASH OFF WOULD SHOW AN ABILITY TO PLAN AND TO THINK, WOULDN'T IT?

A. YES, IT WOULD.

Q. AND GETTING YOUR CHILDREN TO GIVE A FALSE STORY TO THE POLICE WOULD SHOW AN ABILITY TO PLAN AND TO THINK, WOULDN'T IT?

A. YES, IT WOULD.

Q. TAKING A TAG OUT OF A SHIRT WOULD SHOW AN ABILITY TO THINK AND TO PLAN, WOULDN'T IT?

A. WELL, POTENTIALLY. I'D HAVE TO KNOW MORE ABOUT THAT.

Q. AGREED. A LOT OF THINGS THAT YOU DON'T KNOW WOULD HELP YOU TO HAVE MADE YOUR DECISION, WOULDN'T IT?

A. I WILL SAY YES, THAT'S ALWAYS TRUE. BUT I WILL OFFER THAT EVERYTHING YOU HAVE SUGGESTED TO ME HAS BEEN TOLD ME EXCEPT THE PART ABOUT THE TAG IN THE SHIRT. I WASN'T AWARE OF THAT.

MR. ARBOGAST: NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: ANY OTHER QUESTIONS?

MR. HAMMER: NO. NO, SIR.

THE COURT: YOU MAY COME DOWN.

WITNESS: MAY I BE EXCUSED, YOUR HONOR?

MR. HAMMER: HE CAN BE EXCUSED, YOUR HONOR.

THE COURT: YOU MAY BE EXCUSED.

(THE WITNESS WAS EXCUSED.)

THE COURT: CALL YOUR NEXT WITNESS, PLEASE.

MR. HAMMER: YOUR HONOR, I BELIEVE WE

STATE OF NORTH CAROLINA)
WAKE COUNTY)
)

AFFIDAVIT OF
DR. PATRICIO LARA

App B

Patricio P. Lara, M.D., being first duly sworn, deposes and says:

(1) I am a Psychiatrist, formerly employed by the State of North Carolina for thirty-one years at Dorothea Dix Hospital in Raleigh, North Carolina, and now retired. I have testified as an expert witness many times, including in capital cases, and I am familiar with the legal standards applicable at both trial and capital sentencing with respect to a criminal defendant's mental state.

(2) In December of 1992, I examined William Robert Gray pursuant to a court order from Lenoir County requesting an evaluation of his capacity to proceed in regards to a pending murder charge. A copy of my evaluation report is attached. It identifies the sources of information available to me at the time, including information provided to Forensic Case Specialist Dennis Meachum by Dr. Gray's attorney at the time, Bob Worthington.

(3) I have recently been contacted by Dr. Gray's present attorneys, Paul M. Green and Matt Stiegler. I am executing this affidavit at their request. I have not previously been contacted by any attorney representing Dr. Gray.

(4) As reflected in my report, I determined that Dr. Gray was competent to proceed to trial and that his mental state at the time of the offense did not meet the legal test for insanity, based on the available information.

(5) As also reflected in my report, I determined that Dr. Gray was in serious mental and emotional distress when seen at Dorothea Dix six days after the offense. He presented as irritable and paranoid with acute anxiety. I reported a diagnosis of "Adjustment disorder with mixed disturbance of emotions and conduct 309.40." This condition can lead to serious behavioral problems. It was quite serious in Dr. Gray's case. While he retained the ability to think and perform tasks, the disorder severely compromised his judgment and control of social behavior.

(6) At the time of my report, I had little information about Dr. Gray's condition before the offense. Based on the information that was available to me, I was not able to determine the extent to which Dr. Gray's observed mental condition was due to a deterioration following the offense and his arrest, or an adjustment disorder of longer duration, or long-standing personality traits. My main concern was that I could not rule out the possibility that the deterioration I observed did not start immediately after the offense. I therefore stated in my report that "We are aware that we are observing this patient under an extreme situation that may exaggerate personality traits to a level that may appear pathological." I concluded my report as follows:

> Our current sources of information describing this patient's condition prior to the incident in question are quite limited. If other sources of information become available to describe this patient's functioning and condition prior to that time, I would be glad to review the information to expand my opinions if possible in regards to this patient's condition at the time of the alleged offense.

I think that my report conveys, as I intended it to convey, that I could be an important sentencing witness, but I would need more information to state an opinion with confidence. I was surprised at the lack of contact from Dr. Gray's attorneys, and assumed that that they had obtained a stronger psychiatric opinion elsewhere.

(7) At the request of Dr. Gray's present attorneys, I have now reviewed additional materials that were not available to me at the time of my December 1992 evaluation, including an affidavit of Marshall Barker, M.D. dated July 24, 1992, an affidavit of psychologist Marilyn Huber dated July 24, 1992, and the pretrial statements and trial testimony of Debbie Ryals, Wanda Winborne, Yvonne Taylor and others. The new information about Dr. Gray's mental state before the offense is quite consistent with what I observed after the offense.

(8) In light of these additional materials, it clearly appears to me that Dr. Gray's mental condition at the time of the evaluation was not significantly worse than it was at the time of the offense. Had I been provided these materials, I would have been able to state with confidence that the alleged offense was committed while Dr. Gray was under the influence of mental or emotional disturbance, and that Dr. Gray's capacity to conform his conduct to the requirements of law was impaired at that time.

(9) From the time of the evaluation in December 1992, until my retirement in 1999, I was employed by the State of North Carolina as a Psychiatrist on the staff of Dorothea Dix Hospital. I was available to review documents and testify in this case at no charge to Dr. Gray, and would have done so if asked

Patricio P. Lara, M.D.

Sworn to and subscribed before me this
7th day of June 2006.

Notary Public.
My Commission expires: 6/20/09

ANNETTE SHEPPARD NOTARY PUBLIC WAKE COUNTY, N.C.